

UNITED STATES DISTRICT COURT  
Northern District of California  
1301 Clay Street  
Oakland, California 94612

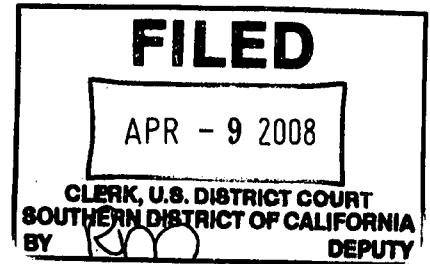
[www.cand.uscourts.gov](http://www.cand.uscourts.gov)

Richard W. Wieking  
Clerk

General Court Number  
510.637.3530

April 1, 2008

U.S. District Court, Southern District of CA  
4290 Edward J. Schwartz Federal Building  
880 Front Street  
San Diego, CA 92101-8900



RE: CV 07-06375 SBA LESLIE A. BYRD-v-ROBERT J. HERNANDEZ

Dear Clerk,

Pursuant to an order transferring the above captioned case to your court, transmitted herewith

are:

- ☒ Certified copy of docket entries.
- ☒ Certified copy of Transferral Order.
- ☒ Original case file documents.
- ☒ Please access the electronic case file for additional pleadings you may need. See the attached instructions for details.

2254	✓	1983
FILING FEE PAID		
Yes	✓	No
HYP MOTION FILED		
Yes	✓	No
COPIES SENT TO		
Court	✓	ProSe

Please acknowledge receipt of the above documents on the attached copy of this letter.

Sincerely,  
RICHARD W. WIEKING, Clerk

by: Jessie Mosley  
Case Systems Administrator

Enclosures  
Copies to counsel of record

I hereby certify that the annexed  
instrument is a true and correct copy of  
the original on file in my office.  
ATTEST:

RICHARD W. WIEKING  
Clerk, U.S. District Court  
Northern District of California

By [Signature]  
Date [Signature] Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

E-FILED

MAR 14 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

LESLIE A. BYRD,

No. C 07-06375 SBA (PR)

Petitioner,

ORDER OF TRANSFER

v.

ROBERT J. HERNANDEZ, Warden,

Respondent.

#4

Petitioner, a state prisoner, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging as a violation of his constitutional rights the denial of parole by the California Board of Parole Hearings.<sup>1</sup> He has paid the filing fee.

A petition for a writ of habeas corpus filed by a state prisoner in a State that contains two or more federal judicial districts may be filed in either the district of confinement or the district of conviction. See 28 U.S.C. § 2241(d). The district court where the petition is filed, however, may transfer the petition to the other district in the furtherance of justice. See id. Federal courts in California traditionally have chosen to hear petitions challenging a conviction or sentence in the district of conviction. See Dannenberg v. Ingle, 831 F. Supp. 767, 767 (N.D. Cal. 1993); Laue v. Nelson, 279 F. Supp. 265, 266 (N.D. Cal. 1968). But if a habeas petition is directed to the manner in which a sentence is being executed, e.g., if it involves parole or time credit claims, the district of confinement is the preferable forum. See Habeas L.R. 2254-3(a); Dunne v. Henman, 875 F.2d 244, 249 (9th Cir. 1989).

Petitioner is incarcerated at the R.J. Donovan Correctional Facility, which lies within the venue of the Southern District of California. See 28 U.S.C. § 84. Because Petitioner challenges the execution of his sentence, the Court hereby ORDERS that pursuant to 28 U.S.C. § 1404(a) and

<sup>1</sup> The Board of Prison Terms was abolished effective July 1, 2005, and replaced with the Board of Parole Hearings. Cal. Penal Code § 5075(a).

United States District Court  
For the Northern District of California

Entered on Civil Docket

3/14/08

1 Habeas L.R. 2254-3(b), and in the interests of justice, this petition be TRANSFERRED to the  
2 United States District Court for the Southern District of California.

3 IT IS SO ORDERED.

4 DATED: 3/13/08

*Saundra B. Armstrong*  
5 SAUNDRA BROWN ARMSTRONG  
6 United States District Judge  
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United States District Court  
For the Northern District of California

United States District Court  
For the Northern District of California

1  
2 UNITED STATES DISTRICT COURT  
3 FOR THE  
4 NORTHERN DISTRICT OF CALIFORNIA

5  
6  
7 LESLIE A. BYRD,  
8 Plaintiff,  
9 v.

Case Number: CV07-06375 SBA

**CERTIFICATE OF SERVICE**

10 ROBERT J. HERNANDEZ et al,  
11 Defendant.  
12 \_\_\_\_\_/

13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
Court, Northern District of California.

14 That on March 14, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said  
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
16 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
located in the Clerk's office.

17  
18 Leslie A. Byrd D-30420  
19 R.J. Donovan Correctional Facility  
20 480 Alta Rd.  
San Diego, CA 92179

21 Dated: March 14, 2008

Richard W. Wieking, Clerk  
By: LISA R CLARK, Deputy Clerk

CLOSED, E-Filing, HABEAS, ProSe, TRANSF

**U.S. District Court  
California Northern District (Oakland)  
CIVIL DOCKET FOR CASE #: 4:07-cv-06375-SBA  
Internal Use Only**

Byrd v. Hernandez  
Assigned to: Hon. Saundra Brown Armstrong  
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 12/17/2007  
Date Terminated: 03/14/2008  
Jury Demand: None  
Nature of Suit: 530 Habeas Corpus  
(General)  
Jurisdiction: Federal Question

**Petitioner****Leslie A. Byrd**

represented by **Leslie A. Byrd**  
D-30420  
R.J. Donovan Correctional Facility  
480 Alta Rd.  
San Diego, CA 92179  
PRO SE

V.

**Respondent**

**Robert J. Hernandez**  
Warden, RJDCF, et al.






I hereby certify that the annexed  
instrument is a true and correct copy of  
the original on file in my office.

ATTEST:

RICHARD W. WICKING  
Clerk, U.S. District Court  
Northern District of California

By [Signature] Deputy Clerk  
Date 4/1/08

Date Filed	#	Select all / clear	Docket Text
12/17/2007	<input checked="" type="radio"/> <u>1</u>	<input type="checkbox"/> 2.0437 MB	PETITION for Writ of Habeas Corpus; No Process (Filing fee \$ 5.00., Receipt No. 34611013624). Filed by Leslie A. Byrd. (jlm, COURT STAFF) (Filed on 12/17/2007) (Entered: 12/20/2007)
12/17/2007	<input checked="" type="radio"/> <u>2</u>	<input type="checkbox"/> 5.045263 MB	EXHIBITS 1-9 re <u>1</u> Petition for Writ of Habeas Corpus filed by Leslie A. Byrd. (Attachments: # <u>1</u> Exhibit 2, Part 1, # <u>2</u> Exhibit 2, Part 2, # <u>3</u> Exhibit 3-9)(Related document(s) <u>1</u> ) (jlm, COURT STAFF) (Filed on 12/17/2007) Modified on 12/21/2007 (jlm, COURT STAFF). (Entered: 12/20/2007)
12/17/2007	<input checked="" type="radio"/> <u>3</u>	<input type="checkbox"/> 4.540014	EXHIBITS 10-18 re <u>1</u> Petition for Writ of Habeas Corpus filed by Leslie A. Byrd. (Attachments: # <u>1</u> Exhibits 10-18)(Related document(s) <u>1</u> ) (jlm, COURT STAFF) (Filed on 12/17/2007)

		MB	Modified on 12/21/2007 (jlm, COURT STAFF). (Entered: 12/20/2007)
12/17/2007			CASE DESIGNATED for Electronic Filing. (jlm, COURT STAFF) (Filed on 12/17/2007) (Entered: 12/20/2007)
03/14/2008	 <u>4</u>	 21.296 KB	ORDER TRANSFERRING CASE.. Signed by Judge ARMSTRONG on 3/13/08. (lrc, COURT STAFF) (Filed on 3/14/2008) (Entered: 03/14/2008)
04/01/2008	 <u>5</u>	 13.386 KB	CLERK'S NOTICE of Transferral of Court file documents to the U.S. District Court, Southern District of CA (San Diego). Petitioner notified. (jlm, COURT STAFF) (Filed on 4/1/2008) (Entered: 04/01/2008)

or

Total filesize of selected documents (MB):

Maximum filesize allowed (MB): 10

**PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

Name BYRD LESLIE A.  
(Last) (First) (Initial)

Prison Number D-30420

Institutional Address 480 Alta Rd., San Diego, CA 92179

**FILED**

DEC 17 2007

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LESLIE ARTHUR BYRD  
Full Name of Petitioner

**CV 07 6375**

vs.

Case No. \_\_\_\_\_  
(To be supplied by the Clerk,  
U.S. District Court)

**SBA**

**(PR)**

ROBERT J. HERNANEZ, Warden, RJDCF et al. PETITION FOR WRIT OF HABEAS CORPUS  
Name of Respondent  
(Warden or jailor)

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma.

If you file in the Northern District because you are now in a prison in this District but you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court in which is located the State court which convicted and sentenced you. The Federal District Courts in California prefer that a petition should be considered in the district of conviction and sentencing. The records can be more easily consulted and witnesses are available if a hearing is necessary.

If you were convicted and sentenced and are not now in a prison in the Northern District, do not file in this District. If you do, your petition will be denied for lack of jurisdiction of the subject matter and you will have to refile in the district of sentencing.

**Who To Name As Respondent**

You must name the person in whose actual custody you are. This usually means the warden or jailor. Do not name the State of California, a city, a county, or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the State judgment against which you seek relief but may be subject to such custody in the future (e.g. detainees), you must name the person in whose custody you are now and the attorney general of the State in which the judgment which you seek to attack was entered.

**PART A****JURISDICTION**

The federal district court can only consider your petition if you satisfy certain jurisdictional requirements. The information below will allow the court to determine whether those requirements are met.

1. For what crime were you sentenced? (If you seek habeas corpus based upon a sentence for more than one crime, list each crime separately, using Penal Code numbers if known. If you are seeking habeas corpus as to more than one sentence, a different petition should be filed for each sentence.)

Second Degree Murder P.C. 187

(Note: Petitioner is appealing his Board of Prison Terms 2006 Hearing)

2. The sentence from which you seek relief is as follows:

(a) Name and location of court which imposed sentence (for example, Alameda County Superior Court, Oakland):

Marin County Superior Court

Marin County, California

Court

Location

(b) Case number, if known 9635

(c) Date and terms of sentence 1986 - 15 Years to Life

(d) Are you now in custody serving this term? Yes ☒ No ☐

(Custody means being in jail, on parole or probation. You are not in custody if you are released on bail, on your own recognizance or if there is a stay of execution of sentence.)

Where? R. J. Donovan Correctional Facility 480 Alta Rd. San Diego, CA 92179  
(Name of Institution) (Address)

3. What post-conviction relief have you sought?



**APPEAL**(a) Did you take an appeal from your conviction? Yes / ☒ / No / ☐

(b) To what court(s)? Check

Court of Appeal Yes / ☒ / No / ☐ 1986 Denied  
(Give year) (Result)Supreme Court of California Yes / ☒ / No / ☐ Year Unknown Denied  
(Give year) (Result)Any other court Federal District Court and 9th Circuit Court  
(Give name and year: Result)(c) If you appealed, were the grounds the same as those which will be set forth in this petition? Yes / ☐ / No / ☒(d) Was any opinion rendered? Yes / ☒ / No / ☐

(e) If you did not appeal, what were your reasons? N/A

(f) Did you seek permission to file a late appeal under Rule 31(a)?

Yes / ☐ / No / ☒If you answered "Yes" give \_\_\_\_\_  
(Name of Court)

(and result)

**OTHER POST-CONVICTION REVIEW**(g) Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes / ☒ / No / ☐

(h) If you answered "Yes" give the following information about each proceeding. (Use back side of this page if you need more space. Fill in the same questions for each.)

1. Name of Court Marin County Superior Court

Type of Proceeding Writ of Habeas Corpus

**Grounds raised (Be brief and specific):**

- a. The Board's Decision was arbitrary and capricious, thus denying due process.
- b. The Board's continual denial of parole based on unchanging factors converts
- c. petitioner's sentence to life without possibility of parole, denying due process.
- d. \_\_\_\_\_
- e. \_\_\_\_\_

Result Denied Date of Result March 19, 2007

Citation of opinion, if any and known None given.

II. Name of Court California Court of Appeal

**Grounds raised (Be brief and specific):**

a. (Same as above)

- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_

Result Denied Date of Result May 30, 2007

Citation of opinion, if any and known None given.

III. Name of Court California Supreme Court

**Grounds raised (Be brief and specific):**

a. (Same as above)

- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_

Result Denied Date of Result November 28, 2007

Citation of opinion, if any and known None given.

(i) If you answered "No" explain briefly why you have not sought any post-conviction review?

N/A

(j) Is any petition or other post-conviction preceeding now pending in any court? Yes ☐ No ☒

(Name and location of Court)

**PART B - TRIAL INFORMATION**

4. Check if any of the following were held in your case?

Arraignment: Yes ☒ No ☐ Preliminary Hearing: Yes ☒ No ☐

Motion to Suppress: Yes ☐ No ☒

5. Check whether a finding of guilty was made after a plea of

Guilty ☐ Not Guilty ☒ Nolo Contendere ☐

Any other plea \_\_\_\_\_

(Specify)

6. Check kind of trial:

Jury ☒ Judge alone ☐

Judge alone on a transcript ☐

7. Did you testify at your trial? Yes ☒ No ☐

**PART C - GROUNDS FOR RELIEF FROM CONVICTION**

State briefly and concisely every ground which you believe supports your claim that you are being held in unlawful confinement. This means telling the court the facts upon which you rely. You should avoid legal arguments with numerous case citations. Thus, what legal right or privilege were you deprived of in your case? What happened to deprive you of this right? Who made the error of which you complain? What did he do wrong? When did he do it? If you lack space to state all your grounds, use the back side of the page.

**NOTE WELL:** You should state all possible grounds for relief from the conviction described in Part A in this petition. If you fail to set forth your grounds now, you may bar yourself from presenting such grounds at a later date, or the respondent may assert successfully that a second petition from you is an abuse of the federal habeas corpus remedy.

**8. Grounds for Relief** (Note: Petitioner is seeking relief from his 2006 Board of Prison Terms Hearing)

**(a) Ground One:** The Board's decision was arbitrary and capricious because it was unsupported by any evidence, inapposite to the record and lacked a rational nexus between the factors cited and petitioner's current parole risk, thus denying due process.

**Supporting Facts:** \_\_\_\_\_

(Please see attached petition)

**(b) Ground Two:** The Board's continual denial of parole based on unchanging factors illegally converts petitioner's sentence of Life With the Possibility of Parole to Life Without the Possibility of Parole, thus denying petitioner's right to due process.

**Supporting Facts:** \_\_\_\_\_

(Please see attached petition)

**(c) Ground Three:** \_\_\_\_\_

**Supporting Facts:** \_\_\_\_\_

**9. If any of the grounds listed were not previously presented to any other court, state briefly which grounds were not so presented and why:**

N/A

10. Supporting cases, if any. List by name and citation only, the cases which you think are close factually to yours so that it is an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

(Please see attached petition)

**PART D - ATTORNEY INFORMATION**

11. Give the name and address of each attorney who represented you in the proceedings attached here.

- (a) Arraignment Jerrold M. Ladar, Suite 310, 507 Polk St., San Francisco, CA
- (b) At preliminary hearing Same as above
- (c) At time of plea Same as above
- (d) At trial Same as above
- (e) At sentencing Same as above
- (f) On appeal Same as above
- (g) Other post-conviction proceeding same as above

12. Was the attorney hired by you or your family? Yes / ☒ / No / ☐

Appointed by the Court? Yes / ☐ / No / ☒

Are you alleging as one ground for relief that your attorney gave you ineffective legal assistance? If so, whom and at what stage?

N/A

13. If you did not have an attorney represent you, did you represent yourself? Yes / ☐ / No / ☐ N/A

With consent of Court: Yes / ☐ / No / ☐

14. Are you represented by an attorney in this petition? Yes / ☐ / No / ☒

If you answered "Yes" give name and address of your attorney:

N/A

WHEREFORE, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Executed at San Diego, California

Dated: 12/12/07

  
Signature of Petitioner

**FORMA PAUPERIS AFFIDAVIT**  
(See Instructions of this form)

I hereby apply for leave to proceed with this habeas corpus petition without prepayment of fees or costs or security therefor. In support of my application, I state that the following facts are true:

- (1) I am the petitioner in said petition, and I believe I am entitled to redress.
- (2) I am unable to pay the costs of said action or give security because:

\_\_\_\_\_  
Signature of Petitioner  
(Sign here only if you seek to  
proceed without payment of fees)

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

I declare under penalty of perjury that the foregoing is true and correct.

Signed on \_\_\_\_\_

(Date)

\_\_\_\_\_  
Signature of Petitioner

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LESLIE ARTHUR BYRD )  
Petitioner, Pro Se )  
v. )  
ROBERT J. HERNANDEZ )  
Warden, RJDCF, et. al. )  
Respondents )

Case No. \_\_\_\_\_

PETITION FOR WRIT OF HABEAS CORPUS  
(Under 28 U.S.C. §2254)

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<u>Ground #2: The Board's continual denial of petitioner's parole, based on unchanging factors and contrary to substantial evidence demonstrating change for the better, illegally converts petitioner's term of life with the possibility of parole to life without the possibility of parole, thus violating petitioner's due process rights under both the state and federal constitutions.</u>	17
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TABLE OF AUTHORITIES

**California Constitution:**

Article I, Section 7, Subdivision (a)

**United States Constitution:**

Fourteenth Amendment

**State Administrative Regulations:**

California Code of Regulations, Title 15, Division 2

California Penal Code §§1473(a), 3041(a), 3041(b)

**State Case Law:**

In re Dannenberg (2005) 34 Cal.4th 1061

In re Elkins (2006) 144 Cal.App.4th 475

In re Lee (2006) 143 Cal.App.4th 1400

In re Ramirez (2001) 94 Cal.App.4th 549

In re Rosenkrantz (2002) 29 Cal.4th 616

In re Scott (2004) 119 Cal.App.4th 871

In re Scott (2005) 133 Cal.App.4th 573

In re Smith (2003) 109 Cal.App.4th 489

In re Smith (2003) 114 Cal.App.4th 343

In re Criscione (2007) Santa Clara County Case #71614 (Judicial  
Notice only)

Terhune v. Superior Court (1986) 65 Cal.App.4th 864

**Federal Case Law:**

Biggs v. Terhune (9th Cir., 2003) 334 F.3d 1510

Diaz v. Norton ( ) 376 F.Supp. 112

Dunn v. U.S. Parole Commission (10th Cir., 1987) 818 F.2d 742

Edwards v. Balisok (1987) 520 U.S. 641

Environmental Defense Ctr., Inc., v. EPA (9th Cir., 2003) 344 F.3d 832

Ellard v. Alabama Bd. of Pardons & Paroles (11th Cir., 1987) 824 F.2d 937

## TABLE OF AUTHORITIES (Cont'd)

Evans v. Carey (E.D. Cal. 2006) WL 1867543

Greenholtz v. Nebraska Penal Inmates (1979) 442 U.S. 1

Hewitt v. Helms (1983) 459 U.S. 460

Hicks v. Oklahoma (1980) 447 U.S. 343

Irons v. Warden of Cal. St. Prison-Solano (E.D. Cal. 2005) 358  
F.Supp.2d 936

Lupo v. Norton ( ) 371 F.Supp. 156

McQuillion v. Duncan (9th Cir., 2002) 306 F.3d 895

Montoya v. U.S. Parole Commission (10th Cir., 1990) 908 F.2d. 635

Morrissey v. Brewer (1972) 408 U.S. 471

Rosenkrantz v. Marshall (C.D. Cal. 2006) 444 F.Supp.2d 1063

Sass v. Cal. Board of Prison Terms (9th Cir., 2006) F.3d\_\_2006  
WL 2506293

Superintendent v. Hill (1985) 472 U.S. 445

United States v. Nixon (1974) 418 U.S. 683

Vargas v. U.S. Parole Commission (9th Cir., 1988) 865 F.2d 191

Vitek v. Jones (1980) 445 U.S. 480

Wolff v. McDonnell (1974) 418 U.S. 539

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5 UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
7  
8

9 LESLIE ARTHUR BYRD )  
10 Petitioner, Pro Se )

Case No. \_\_\_\_\_

11 v. )

12 ROBERT J. HERNANDEZ )  
13 Warden, RJDCF, et. al. )

14 Respondents )

PETITION FOR WRIT OF HABEAS CORPUS  
(Under 28 U.S.C. §2254)

15 INTRODUCTION

16 Petitioner, Leslie Arthur Byrd, hereby submits the foregoing Petition For  
17 Writ of Habeas Corpus, alleging that the Board of Prison Hearings (hereinafter  
18 the "Board") has violated his constitutional right to Due Process as guaranteed  
19 by the Fourteenth Amendment of the United States Constitution.

20 In 1986, petitioner was convicted in Marin County superior Court of  
21 murder (second degree) and was sentenced to fifteen years to life (Case #9635).  
22 (For a summary of the offense, see Exhibit #1, p.1).

23 Under a 15-to-life sentence, the term is not to be set by the trial  
24 court, but is to be determined by the California Board of Prison Hearings.  
25 The primary statutes and regulations governing the Board's suitability  
26 hearings are Penal Codes §§3041(a) and 3041(b), as well as the California  
27 Code of Regulations, Title 15, Division 2 (see in re Rosenkrantz (2002)  
28 128 Cal.Rptr.2d pp.137-138).

1 Petitioner attended his initial parole hearing in 1993 and requested  
2 a postponement so that he could complete a Category "T" (therapy) program  
3 (see Exhibit #6, pp.1,2). During subsequent parole hearings in 1996 and 2002,  
4 petitioner was denied parole for 5 and 3 years, respectively. In 2005,  
5 petitioner stipulated to a 1 year denial so that he could obtain an updated  
6 psychological assessment (see Exhibit #3, p.1), and in 2006 petitioner was  
7 denied parole for 3 years. In the foregoing writ, petitioner challenges  
8 the Board's decision at his 2006 hearing, alleging:

9 1) The Board's decision was arbitrary and capricious because it was  
10 unsupported by any evidence, inapposite to the record, and lacked any  
11 rational nexus between the factors cited and the petitioner's current  
12 parole risk;

13 2) The Board's continual denial of petitioner's parole, based on  
14 unchanging factors and contrary to substantial evidence demonstrating  
15 change for the better, illegally converts petitioner's term of Life With  
16 The Possibility of Parole to Life Without The Possibility of Parole.

17 Based on these grounds petitioner believes the Board has violated his  
18 liberty interest in parole and his due process rights as guaranteed by  
19 the Fourteenth Amendment of the United States Constitution.

20 **I. THE PARTIES**

21 **LESLIE ARTHUR BYRD** is the petitioner, represented Pro Se, and is  
22 currently incarcerated at the Richard J. Donovan Correctional Facility  
23 in San Diego, California.

24 **ROBERT J. HERNANDEZ** is the warden of the Richard J. Donovan Correctional  
25 Facility and currently has legal custody of the petitioner.

26 **JAMES DAVIS** is the Chairperson of the Board of Prison Hearings which  
27 is the legal agency responsible for administering petitioner's sentence.  
28

1 **II. EXHAUSTION OF ADMINISTRATIVE AND STATE REMEDIES**

2 Effective May 1, 2004, the Board repealed its regulation requiring  
3 life-term inmates to file an administrative appeal when challenging Board  
4 decisions. Hence, there are no administrative remedies for petitioner to  
5 exhaust.

6 Petitioner filed a writ in the state courts, raising the same issues as  
7 the instant petition, on March 13, 2007. These claims were denied by the  
8 California Supreme Court on 11/28/07 (see Exhibits #15, #16 and #17).  
9 Hence, all state remedies have been properly exhausted.

10 **III. STATEMENT OF JURISDICTION.**

11 The United States District Court for the Northern District of  
12 California has jurisdiction under 28 U.S.C. §2254(a), which states:

13 "The Supreme Court, a justice thereof, a circuit judge,  
14 or a district court shall entertain an application for  
15 a writ of habeas corpus on behalf of a person in state  
custody pursuant to the judgement of the state court only  
on the grounds that he is in custody in violation of the  
constitution or laws or treaties of the United States."

16 Petitioner asserts that he is custody in violation of the Constitution of  
17 the United States.

18 The United States District Court for the Northern District of  
19 California also has legal jurisdiction under 28 U.S.C. §2254(a) because  
20 petitioner has exhausted remedies available in the courts of the state;  
21 and also under §2254(d) because the adjudication of petitioner's claims  
22 in state court as "resulted in a decision that was contrary to, or involved  
23 an unreasonable application of, clearly established federal law, as  
24 determined by the Supreme Court of the United States."

25 **IV. REQUIREMENTS OF DUE PROCESS; STANDARD OF REVIEW**

26 1) The Board must follow its own rules and regulations governing parole  
27 suitability hearings Vargas v. U.S. Parole Commission (9th Cir., 1988) 865 F.2d  
28 191, pp. 193-194.

1           2) State parole statutes and regulations bestow in inmates a liberty  
2 interest in parole protected by due process Mcquillion v. Duncan (9th Cir.,  
3 2002) 306 F.3d 895 pp.901-903; In re Rosenkrantz (2002) 128 Cal.Rptr.2d 114.

4           3) Petitioner's liberty interest required him to be found suitable for  
5 parole because, after his minimum eligible parole date had lapsed, he had been  
6 evaluated to no longer pose an unreasonable risk of danger to public safety  
7 (Penal Code §3041(a); CCR, Title 15, §§2401, 2402(a)). United States Supreme  
8 Court law holds that states must follow their own penal statutes Hicks v.  
9 Oklahoma (1980) 447 U.S. 343.

10          4) The Board's decision cannot be arbitrary and capricious and must show  
11 a rational nexus between factors cited and stated conclusions In re Sturm (1974)  
12 11 Ca.3d 258; Montoya v. U.S. Parole Commission (10th Cir., 1990) 908 F.2d 635;  
13 Dunn v. U.S. Parole Commission (10th Cir., 1987) 818 F.2d 742, 745.

14          5) The California Supreme Court holds that the Board may only deny parole  
15 to life-term inmates as long as they meet the specified factors on the Board's  
16 regulations (e.g., CCR, Title 15, §2402(c) and there is "some evidence" to  
17 support the Board's findings In re Rosenkrantz (2002) 128 Cal.Rptr.2d 114,  
18 pp.137, 141. However, U.S. Supreme Court law holds that the "some evidence"  
19 standard is an additional requirement of due process, not the only requirement  
20 Edwards v. Balistock (1997) 520 U.S. 641, 117 S.Ct. 1584, 1588.

21          6) Repeated or continual denial of parole, based on unchanging or static  
22 factors, and contrary to substantial evidence demonstrating change for the  
23 better, violated a protected liberty interest because it converts the sentence  
24 of life-term inmates from "Life With The Possibility of Parole" to "Life  
25 Without The Possibility of Parole" Biggs v. Terhune (9th Cir., 2003) 334  
26 F.3d 910.  
27  
28

1        **GROUND #1: THE BOARD'S DECISION IS ARBITRARY AND CAPRICIOUS BECAUSE**  
2        **IT IS UNSUPPORTED BY ANY EVIDENCE, INAPPOSITE TO THE**  
3        **RECORD, AND LACKS ANY RATIONAL NEXUS BETWEEN THE FACTORS**  
4        **CITED AND PETITIONER'S CURRENT PAROLE RISK, THUS VIOLATING**  
5        **PETITIONER'S STATE AND FEDERAL CONSTITUTIONAL RIGHT TO**  
6        **DUE PROCESS.**

7        California's parole scheme gives rise to a cognizable liberty interest  
8        that is entitled to protection under both state and federal Constitutions  
9        In re Rosenkrantz (2002) 29 Cal.4th 616, 621; McQuillion v. Duncan (9th  
10        Cir., 2002) 306 F.3d 895, 903; Biggs v. Terhune (9th Cir., 2003) 334 F.3d  
11        910, 914, 915; Sass v. Cal. Bd. of Prison Terms (2006) \_\_\_ F.3d \_\_\_ 2006 WL 2506393.

12        Under California state law, one year prior to petitioner's minimum  
13        eligible parole release date, petitioner is entitled to appear before the  
14        Board to be considered for parole (Penal Codes §§3041(a) and 3041(b).  
15        Accordingly, as specified by statute, the Board "shall normally set a  
16        parole release date" unless "it determines that the gravity of the current  
17        convicted offense or offenses, or the timing and gravity of current or  
18        past convicted offenses, is such that consideration of the public safety  
19        requires a more lengthy period of incarceration..." In re Ramirez (2001)  
20        94 Cal.App4th 549; 114 Cal.Rptr.2d 381, 393.

21        The Board has established regulations for determining whether an  
22        inmate is suitable or unsuitable for release on parole which are published  
23        in the California Code of Regulations, Title 15, Division 2 (hereinafter  
24        "CCR"). The relevant sections of the CCR, as applied by the Board at the  
25        petitioner's parole hearing, are §§2400-2411. CCR §2402(a)  
26        states, "The panel shall first determine whether a prisoner is suitable  
27        for release on parole. Regardless of the length of time served, a life  
28        prisoner shall be found unsuitable if in the judgement of panel the  
29        prisoner will pose an unreasonable risk of danger to society if released  
30        from prison." Hence, as specified by statute and regulation, the Board



1 shall set a release date unless the inmate currently poses an unreasonable  
2 risk of danger to society (see In re Smith (2003) 114 Cal.App.4th 343,370  
3 holding "[A] determination of unsuitability is simply shorthand for a  
4 finding that a prisoner currently would pose an unreasonable risk of  
5 danger if released at this time.").

6 In making its determination, the Board "must be cognizant not only of  
7 the factors required by state statute...but also concepts embodied in the  
8 Constitution requiring Due Process." Greenholtz v. Nebraska Penal  
9 Inmates (1979) 442 U.S. 1, pp.7-8. Furthermore, according to the California  
10 Supreme Court, parole decisions "must reflect an individualized  
11 consideration of the specified criteria and cannot be arbitrary and  
12 capricious." In re Rosenkrantz (2002) 29 Cal.4th 616, 677; see also  
13 In re Dannenberg (2005) 34 Cal.4th 1061, 1071, holding Board decisions  
14 not based on evidence or relevant factors may deny prisoner their Due  
15 Process rights. Our U.S. Supreme Court demands no less, holding "Prisoners  
16 are entitled to be free from arbitrary actions of prison officials that  
17 affect their constitutionally protected interests." Wolff v. Mc Donnell  
18 (1974) 418 U.S. 539, 558; Vitek v. Jones (1980) 445 U.S. 480, pp.488-489.  
19 As summarized in Ramirez,

20 "Judicial oversight must be extensive enough to protect  
21 the limited right of parole applicants to be free from  
22 an arbitrary parole decision...and to something more than  
23 mere pro forma considerations. (citation) The courts may  
24 properly determine whether the Board's handling of parole  
25 applicants is consistent with parole policies established  
26 by the Legislature. (citation) While courts must give  
27 great weight to the Board's interpretation of the parole  
28 statutes and regulations, final responsibility for inter-  
preting the law rests with the courts. (citation) Courts  
must not second-guess the Board's evidentiary findings.  
(citation) However, it is the proper function of judicial  
review to ensure the Board has honored in a 'practical  
sense' the applicants right to 'due consideration'.  
(citation) In re Ramirez (2001) 94 Cal.App.4th 549, 564.

1           A. There is not "some evidence" to support the Board's  
2           decision that the petitioner currently poses an  
3           unreasonable risk of danger to society.

4           According to state and federal law, parole decisions must be supported  
5           by some evidence and that evidence must have an "indicia of reliability"  
6           In re Rosenkrantz (Id.); Biggs v. Terhune (9th Cir., 2003) 334 F.3d 910, 915.  
7           More specifically, "suitability determinations must have some rational  
8           basis in fact." In re Elkins (2006) \_\_\_ Cal.Rptr.3d \_\_\_ 2006 WL 3072139.

9           It is important that the some evidence standard be properly understood.  
10          First, the some evidence standard is an additional requirement of due  
11          process, not the only requirement Edwards v. Balisok (1997) 520 U.S. 614,  
12          648. Second, the courts are not to look only at whether some evidence  
13          supports the Board's application of any given criteria, but whether the  
14          Board's decision contains some evidence that an inmate currently poses  
15          an unreasonable risk of danger to society In re Lee (2006) \_\_\_ Cal.Rptr.3d  
16          \_\_\_ 2006 WL 2947968, p.4; In re Elkins (2006) \_\_\_ Cal.Rptr.3d \_\_\_ WL 3072139, p.12.

17          As stated in Rosenkrantz, "the governing statute provides the Board  
18          must grant parole unless it determines that public safety requires a  
19          lengthier period of incarceration for the individual because of the  
20          gravity of the offense underlying the conviction. (citation) And as  
21          set forth in the governing regulations, the Board must set a parole date  
22          for a prisoner unless it finds, in the exercise of its judgement, after  
23          considering the circumstances enumerated in section 2402 [or 2281] of  
24          the regulations, that the prisoner is unsuitable for parole." In re  
25          Rosenkrantz (2002) 128 Cal.Rptr. 114, 138. Hence, as required by our  
26          state supreme court, the Board must set a parole date unless a prisoner  
27          is found unsuitable for parole as specified by statute or regulation.

28          In making the section 3041(b) suitability determination, the Board  
must consider "[a]ll relevant, reliable information" (CCR §2402(b)),

1 including the nature of the commitment offense and behavior before, during  
2 and after the crime; the petitioner's social history; mental state;  
3 criminal record; attitude toward the crime; and parole plans (CCR §2402(b)).  
4 The circumstances tending to show unsuitability for parole include that  
5 the inmate 1) committed the offense in a particularly heinous, atrocious  
6 or cruel manner; 2) possesses a previous record of violence; 3) has an  
7 unstable social history; 4) has previously sexually assaulted another  
8 individual in a sadistic manner; 5) has a lengthy history of severe  
9 mental problems related to the offense; and 6) has engaged in serious  
10 misconduct while in prison (CCR §2402(c) (1)(2)(3)(4)(5) & (6)).

11 At petitioner's 2006 hearing, the Board denied petitioner a parole  
12 release date essentially based upon the nature of the crime, stating:  
13 "We come to this conclusion first and foremost from the commitment offense  
14 itself" (Exhibit #2, p.93). While the Board went on to criticize petitioner's  
15 psychological evaluation as "inconclusive" and petitioner's parole plans  
16 as lacking "significant specificity and/or documentation" (Exhibit #2, p.98)  
17 these reasons cited by the Board do not constitute "some evidence" that  
18 petitioner currently poses an unreasonable risk of danger to society.  
19 The offense is so old (i.e. over 21 years at the time of the hearing)  
20 that it lacks the "indicia of reliability" to indicate that petitioner  
21 still poses a current, credible danger (see, for example, In re Elkins  
22 Id. at p.12, holding "the predictive value of commitment offense may be  
23 very questionable after a long period of time. (Citation)"). Additionally,  
24 petitioner suffers from multiple sclerosis, an incurable, progressive  
25 debilitating neurological disease which now requires petitioner to use  
26 a wheelchair and further diminishes any potential danger to society  
27 (Exhibit #13, pp.1,2) In re Lee (2006) 43 Cal.App.4th.

28 Petitioner denies that the psychological assessment prepared for

1 Board in 2006 was "inconclusive." The report, completed by Doctor  
2 Luisa Fijman, Staff Psychiatrist, includes a clear assessment of  
3 petitioner's danger to society, if paroled, stating:

4 "Mr. Byrd's violence potential outside a controlled setting  
5 in the past was considered to have been less than average  
6 and at present, it is estimated to be reduced from that level.  
7 If released to the community, he would in all probability  
8 be likely to continue improvement given his defined set of  
9 expectations and goals, along with family support. He  
10 further appears to have internal resources necessary,  
11 along with the motivation to be productive and contribute  
12 to helping others." (Exhibit #7, p.6)

13 A psychological assessment completed in 2001 by Doctor Gary Pesavento,  
14 Staff Psychologist, concludes:

15 "In closing, Mr. Byrd should be removed from the special  
16 calendar because psychopathology is not related to future  
17 criminal behavior. Psychological opinion would not  
18 contribute to a release decision." (Exhibit #8, p.7)

19 The Category "T" Final Report, completed in 1996 by Doctor J. M. Henry,  
20 Senior Psychologist, after a 14 month intensive therapy program  
21 conducted by a panel of psychiatrists and psychologists, stated: "Mr.  
22 Byrd's violence potential outside a controlled setting is considered  
23 quite low." (Exhibit #9, p.2)

24 "He has frequently discussed his remorse on a formal basis  
25 and an informal basis in a number of settings. He is  
26 consistent with his feelings and emotions. In discussing  
27 remorse for this report, he had to pause a number of times  
28 to regain his composure. In this writer's opinion, Mr. Byrd's  
remorse is appropriate, pervasive and genuine." (Exhibit #9, p.4)

The Category "T" Report concludes:

"No further individual or group therapy is seen as necessary  
to prepare Mr. Byrd to return to the community."..."It is  
highly likely that this inmate represents a minimal risk to  
society if released." (Exhibit #9, p.4)

1 With regard to the Board's assertion that petitioner's parole plans  
2 lacked "significant specificity and/or documentation," petitioner discussed  
3 this issue at length with the Board during the hearing (Exhibit  
4 The petitioner sought input from the Board regarding the nature of the  
5 "specificity" they required and documentation requested was trivial in  
6 light of the discussion. Petitioner notes that, included among his  
7 letters of support, is a letter promising financial support for the  
8 petitioner upon his release (Exhibit #10, p.1) Petitioner also notes  
9 that, due to his progressive physical disability, any parole plans are  
10 and must remain somewhat fluid, depending on the level of petitioner's  
11 disability at the time of his parole.

12 As the above facts and arguments indicate, the Board's decision is  
13 arbitrary and capricious and violates due process, as guaranteed by both  
14 state and federal Constitutions, because there is no evidence that the  
15 petitioner currently poses and unreasonable risk of danger to society  
16 In re Rosenkrantz (Id.); McQuillion v. Duncan (Id.); Biggs v. Terhune (Id.).

17 **B. The Board's decision is inapposite to the record.**

18 The Board's decision is arbitrary and capricious and abrogates due  
19 process because it is inapposite to the record that was before them.  
20 Factors tending to show suitability for parole are:

21 1) No Juvenile Record. The prisoner does not have a record of  
22 assaulting others as a juvenile or committing crimes with a potential of  
23 personal harm to victims;

24 2) Stable Social History. The prisoner has experienced reasonably  
25 stable relationships with others;

26 3) Signs of Remorse. The prisoner performed acts which tend to  
27 indicate the presence of remorse, such as attempting to repair the damage,  
28 seeking help for or relieving suffering of the victim, or indicating he

1 understands the nature and magnitude of the offense;

2 4) Motivation for Crime. The prisoner committed his crime as a result  
3 of significant stress in his life, especially if the stress has built over  
4 a long period of time;

5 5) Battered Woman Syndrome. At the time of the commission of the  
6 crime, prisoner suffered from Battered Woman Syndrome, as defined in  
7 Section 2006(b), and it appears the criminal behavior was the result of  
8 that victimization;

9 6) Lack of Criminal History. The prisoner lacks any significant  
10 history of violent crime;

11 7) Age. The prisoner's present age reduces the probability of  
12 recidivism;

13 8) Understanding and Plans for Future. The prisoner has made  
14 realistic plans for release or has developed marketable skills that can  
15 be put to use upon release;

16 9) Institutional Behavior. Institutional activities indicate an  
17 enhanced ability to function within the law upon release (Cal. Code of  
18 Regs., Title 15, §2402).

19 Petitioner believes that, absent Battered Woman Syndrome, he meets  
20 the criteria for all of the other factors tending to show suitability  
21 for parole. 1) Petitioner has no juvenile record; 2) Petitioner has  
22 been married to the same woman since 1967, was gainfully employed  
23 throughout the marriage and has broad support from family and friends;  
24 3) The petitioner has repeatedly expressed remorse for his actions and  
25 has indicated that he understands the nature and magnitude of the offense  
26 (Exhibit #7, p.5) (Exhibit #8, pp.5,6) (Exhibit #9, p.3). Petitioner alleges  
27 that significant stress contributed to his behavior. In addition to the  
28 increasing stress brought on by his advancing disease, petitioner was

1 undergoing significant stress at work. Petitioner was employed as the  
2 Loan Supervisor for a bank in Northern California which had approximately  
3 45 branches, and was responsible for supervising approximately \$700,000,000  
4 in loans. The fear that his advancement in the banking industry would be  
5 curtailed, or even ended, should his medical condition be discovered by  
6 the bank was the source of increasing stress as his condition slowly  
7 deteriorated; 5) Battered Woman Syndrome is not applicable; 6) Lack of  
8 Criminal History. Petitioner has no prior criminal history, whatsoever;  
9 7) Age. Petitioner is 61 years old; 8) Understanding and Plans For the  
10 Future. As previously stated, petitioner has broad family and financial  
11 support. Additionally, petitioner is a college graduate and has in the  
12 past demonstrated the ability to earn a living; 9) Institutional Behavior.  
13 Petitioner has demonstrated exemplary institutional behavior, as  
14 acknowledged by the Board during the hearing (Exhibit #2, p.94), and  
15 has participated extensively in self-help groups and has devoted many  
16 hours to assisting other inmates (Exhibit #11, pp.2-10). In addition,  
17 petitioner has received laudatory chronos from custody staff (Exhibit  
18 and one chrono making a direct recommendation for parole from a Correctional  
19 Captain (Exhibit #11, p.1).

20 The Board's decision violates due process because it does not conform  
21 with the Board's own regulations (see, for example, Vargas v. U.S. Parole  
22 Commission (9th Cir., 1988) 865 F.2d, pp.193-194, holding parole boards  
23 are bound to follow their own regulations and...these regulations have  
24 the force of law; and Ellard v. Alabama Board of Pardons and Paroles  
25 (11th Cir., 1987) 824 F.2d pp. 937,943, holding "[T]he Due Process  
26 clause...prohibits the states from negating by their actions rights  
27 which they have conferred by their words.")

28 In Rosenkrantz, the state supreme court states, "It is irrelevant



1 that a court might determine that evidence in the record tending to  
2 establish suitability for parole far outweighs evidence demonstrating  
3 unsuitability for parole." In re Rosenkrantz, supra, 128 Cal.Rptr.114, 156.  
4 Petitioner disagrees. As stated in Greenholtz, "[t]he behavior of an  
5 inmate during confinement is critical in the sense that it reflects the  
6 degree to which the inmate is prepared to adjust to parole release."  
7 Greenholtz v. Nebraska Penal Inmates (1979) 442 U.S. 1, 15. More  
8 importantly, the ultimate question to be determined by the Board is  
9 whether or not a prisoner currently poses an unreasonable risk of danger  
10 to society. A reformed prisoner can in no way be regarded as a danger  
11 or threat to the public, and if a prisoner is not a current danger then  
12 parole must be granted (Penal Codes 3041(a) and 3041(b)).

13 Finally, the Board's decision is also inapposite to the record  
14 because it ignores the "Matrix of Base Terms for Second Degree Murder"  
15 as provided in CCR 2402(b) (Exhibit #12, p.1). Given the circumstances, the  
16 petitioner's commitment offense falls under categories "C-III" on the  
17 Matrix (Severe Trauma with No Prior Relationship), which gives a  
18 suggested term of 19-20-21 years. At the time of the hearing, however,  
19 petitioner had been incarcerated for over 21 years. True, the gravity  
20 of the offense can serve as the sole reason for denying parole, especially  
21 if the offense is particularly egregious (Ramirez, Id.), but even a  
22 particularly egregious offense has its limits. Consider, for example,  
23 the case of Rosenkrantz. The egregiousness of Rosenkrantz's crime as  
24 a second degree murder justified denying his parole, but as the state  
25 supreme court cautioned, once Rosenkrantz reaches the point where he is  
26 serving time for first degree murder denying his parole would be  
27 questionable, even under the deferential "some evidence" standard  
28 In re Rosenkrantz, supra, 128 Cal.Rptr. at pp. 166-167. In fact, the



1 state supreme court explicitly stated:

2 "The Board's authority to make an exception [to the setting  
3 of a parole date] should not operate so as to swallow the rule  
4 that parole is normally to be granted. Otherwise, the Board's  
5 case-by-case rulings would destroy the proportionality  
6 contemplated by Penal Code 3041, subdivision (a), and also by  
7 the murder statutes, which provide distinct terms of life  
8 without possibility of parole, 25 years to life, and 15 years  
9 to life for various degrees and kinds of murder." (Id. at p.161)

10 Petitioner has now surpassed the maximum expected term for second degree  
11 murder and is, essentially, being considered as having a first degree murder.  
12 Furthermore, after long periods of time, the egregiousness of the offense  
13 loses its weight and, at some point, may even be illogical to use as  
14 justification for denying parole. As cited in federal law:

15 "It is simply irrational for [the] seriousness of the offense  
16 to be used first to determine the appropriate guideline period  
17 and then to be used again as the stated reason for confining  
18 a prisoner beyond that guideline period." Lupo v. Norton, 371  
19 F.Supp 156, 163. (See also Diaz v. Norton, 376 F.Supp 112 at  
20 115 stating, relying on the seriousness of the offense "beyond  
21 the appropriate guideline...would not be appropriate because  
22 the guideline table (matrix) already assesses the seriousness  
23 of the offense."

24 Hence, as the above factors and arguments demonstrate, the Board's  
25 decision is arbitrary and capricious and violates due process because it  
26 is inapposite to the record that was before them during the hearing.

27 **C. The Board's decision lacks a rational nexus between the  
28 factors cited and the petitioner's current parole risk.**

As stated at the outset of this Ground, "suitability determinations  
must have some rational basis in fact." In re Elkins (2006) \_\_\_ Cal.Rptr.3d  
\_\_\_ 2006 WL 3072139, p.7. Accordingly, parole decision must be more than  
a "mouthing on conclusionary words" and have a "reliable factual  
underpinning" In re Scott (2004) 119 Cal. App.4th 871 (See also In re  
Smith (2003) 114 Cal.App.343, 371, holding Board decisions are arbitrary  
when "no chain of reasoning" exists between "[the] immutable factor of  
drug use and current parole risk in view of a long period of abstinence.")

1 Federal law concurs. In Dunn, for example, the Tenth Circuit struck down  
2 a decision by the U.S. Parole Commission on the grounds that it was  
3 arbitrary for the commission to rely on an 18-year-old insanity plea to  
4 deny parole, particularly when current mental health evaluation stated  
5 the prisoner had no current mental illness Dunn v. U.S. Parole Commission  
6 (10 Cir., 1987) 818 F.2d 635 742, 745 (see also Montoya v. U.S. Parole  
7 Commission (10th Cir., 1990) 908 F.2d 635, pp. 639-640.

8 A rational nexus may exist, for instance, if a prisoner committed  
9 an offense while he was in a gang and current evidence in the record  
10 shows that he is still an active gang member or engaging in gang activities;  
11 or if a prisoner committed an offense while addicted to drugs and current  
12 evidence in the record shows that his addiction is not in remission or  
13 he recently used drugs. But in the present case before the court, there  
14 is no evidence that such a nexus exists. On the contrary, the reasons  
15 cited by the Board that the petitioner currently poses an unreasonable  
16 risk of danger to society defy logic. As previously stated, the Board  
17 came to its decision "first and foremost from the commitment offense  
18 itself." (Exhibit #2, p.93) The record shows that the petitioner has  
19 been a model inmate for over 20 years, meets every single applicable  
20 criteria for suitability, and has been forensically evaluated multiple  
21 times over a long period of time as having a less than average risk of  
22 violent behavior if released to the community. The Board's reasons for  
23 denying petitioner's parole, in fact, clearly meet the definition of  
24 "arbitrary" as defined by the Ninth Circuit Court of Appeals, when it stated:

25 "An agency has acted in an arbitrary and capricious manner if  
26 "the agency has relied on factors that Congress has not  
27 intended it to consider, entirely failed to consider an  
28 important aspect of the problem, offered an explanation for  
its decision that runs contrary to the evidence before the  
agency, or is so implausible that it could not be ascribed  
to a difference in view or the product of the agency expertise."  
Environmental Defense Ctr., Inc v. EPA (9th Cir., 2003) 344 F.3d  
832, 858.

1 More importantly, according to regulation, parole is to be denied only  
2 if petitioner currently poses an unreasonable risk of danger to society  
3 (CCR §2402(a)). Petitioner submits that after more than 20 years in  
4 prison, and having surpassed the maximum suggested terms for the worst  
5 classification of second degree murder; who has programmed in an  
6 exemplary manner while incarcerated; who has been forensically evaluated  
7 multiple times as posing a minimal risk to the public if released; and  
8 who is experiencing deteriorating health due to an incurable and  
9 progressive disease, should not be deemed as posing an unreasonable risk  
10 of danger to society. Hence, as the above facts and arguments indicate,  
11 the Board's decision is arbitrary and capricious and violates due process  
12 because there is no rational nexus between the reasons cited for denying  
13 parole and petitioner's current parole risk.  
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1       GROUND #2: THE BOARD'S CONTINUAL DENIAL OF PETITIONER'S PAROLE,  
2       BASED ON UNCHANGING FACTORS AND CONTRARY TO SUBSTANTIAL  
3       EVIDENCE DEMONSTRATING CHANGE FOR THE BETTER, ILLEGALLY  
4       CONVERTS PETITIONER'S TERM OF LIFE WITH THE POSSIBILITY  
5       OF PAROLE TO LIFE WITHOUT THE POSSIBILITY OF PAROLE, THUS  
6       VIOLATING PETITIONER'S DUE PROCESS RIGHTS UNDER BOTH  
7       STATE AND FEDERAL CONSTITUTIONS.

8       As previously stated, California life-term inmates have a liberty  
9       interest entitled to protection under the Due Process clause of the state  
10      and U.S. Constitutions In re Rosenkrantz (Id.), McQuillion v. Terhune (Id.),  
11      Biggs v. Terhune (Id.). When an individual has a liberty interest  
12      protected by the Fourteenth Amendment, it cannot be arbitrarily denied by  
13      State government Vitek v. Jones (1980) 445 U.S. 480, pp. 488-489; Greenholtz  
14      v. Nebraska Penal Inmates (1970) 442 U.S. 1; Morrissey v. Brewer (1972) 408  
15      U.S. 471. Accordingly, "[P]risoners are entitled to be free from arbitrary  
16      actions of prison officials that affect their constitutionally protected  
17      interests." Wolff v. McDonnell (1974) 418 U.S. 539, 558; Hewitt v. Helms  
18      (1983) 459 U.S. 460, 466; see also Superintendent v. Hill (1985) 472 U.S.  
19      445, 457, holding a decision by prison officials cannot be "without support"  
20      or arbitrary. The California Supreme Court concurs, recognizing that Board  
21      decisions not based on evidence or relevant factors may deny prisoners  
22      their due process rights In re Dannenberg (2005) 34 Cal.4th 1061, 1071.  
23      Thus, the touchstone of Due Process is protection of the individual against  
24      arbitrary action by the government Wolff v. McDonnell, supra, 418 U.S. at 558.

25      According to state penal statutes, parole "shall normally" be granted  
26      unless a prisoner poses an unreasonable risk of danger to society (Penal  
27      Codes §§3041(a) and 3041(b)). At petitioner's 2006 parole hearing, petitioner  
28      presented a plethora of evidence that he had undergone substantial change  
for the better and that he does not currently pose a danger to society. Yet,  
in spite of this showing, petitioner was denied parole primarily based on  
outdated, unchanging and static factors, specifically, the offense itself.

1 (Exhibit #2, p.94). While the Board went on to characterize petitioner's  
2 most recent psychological assessment as "inconclusive" (Exhibit #2, p.97)  
3 petitioner strongly disagrees and points out that the board has a history  
4 of discounting petitioner's favorable psychological evaluations. At the  
5 petitioner's 2002 hearing the Board characterized a psychological evaluation  
6 by Staff Psychologist Dr. Gary Pesavento as "not negative" but asked for  
7 a new evaluation stating that some of the issues in the case had not been  
8 dealt with very completely (Exhibit #4, p.3). At petitioner's 1996  
9 hearing, the Board characterized a psychological assessment summarizing  
10 14 months of intensive therapy as "superficial" and recommended more therapy.  
11 (Exhibit #5, p.2) despite a specific finding by a panel of therapists that  
12 no further therapy was needed and that petitioner represented a "minimal  
13 risk to society if released" (Exhibit #9, p.4). The only other factor  
14 cited by the Board in its decision was a statement that petitioner's  
15 parole plans lacked "significant specificity and/or documentation"  
16 (Exhibit #2, p.98) however at petitioner's 2002 parole hearing the Board  
17 stated, "Regarding his parole plans, he appears to have some financial  
18 resources and family support. He certainly has job skills so parole  
19 plans aren't a particular issue with the Board." (Exhibit #4, p.3).

20 The Ninth Circuit addressed the constitutional propriety of the  
21 Board's reliance on the commitment offense and other static factors in  
22 Biggs v. Terhune (9th Cir., 2003) 334 F.3d 910. Biggs was convicted of  
23 first degree murder and challenged the Board's decision denying him parole  
24 at his initial hearing. Although the Ninth circuit found no evidence to  
25 to support most of the Board's grounds for unsuitability, the court  
26 nevertheless affirmed the Board's decision, reasoning "the parole board's  
27 sole reliance on the gravity of the offense and conduct prior to  
28 imprisonment to justify denial of parole can be initially justified as

1 fulfilling the requirements set forth by state law." (Id. at 916).  
2 The court cautioned, however, that "Over time...should Biggs continue  
3 to demonstrate exemplary behavior and evidence of rehabilitation, denying  
4 him parole simply because of the nature of the offense would raise serious  
5 questions involving his liberty interest." (Id.) The Ninth Circuit also  
6 stated, "A continued reliance in the future on an unchanging factor, the  
7 circumstances of the offense, and conduct prior to imprisonment, run  
8 contrary to the rehabilitative goals espoused by the prison system and  
9 could result in a due process violation." (Id. at (917)).

10 Although the Ninth Circuit did not hold when a due process violation  
11 would occur, the California Court of Appeal and several United States  
12 District Courts have found that the Board's reliance on unchanging  
13 factors and the commitment offense in certain cases violated due process  
14 (see, for example, In re Elkins (2006) 144 Cal.App.4th 475, 498, review  
15 denied Nov. 8, 2006 ("Given the lapse of 26 years and the exemplary  
16 rehabilitative gains made by [the prisoner] over that time, continued  
17 reliance on [the] aggravating facts of the crime no longer amount to  
18 'some evidence' supporting denial of parole."); In re Lee (2006) 43 Cal.  
19 App.4th 1400, 1409 ("Like the Governor, we do not minimize the seriousness  
20 of Lee's offense 19 years ago, for which society has legitimately  
21 punished him. No reasonable possibility exists, however, that Lee will  
22 reoffend. Other than his offenses here, he has led a crime-free life.")  
23 Id. at 1412 ("Simply from the passing of time, Lee's crimes of almost 20  
24 years ago have lost much of their usefulness in foreseeing the likelihood  
25 of future offenses than if he had committed them five or ten years ago.");  
26 Irons v. Warden of Cal. State Prison-Solano (E.D. Cal. 2005 358 F.Supp.2d  
27 936, 947 ("In the instant case, the [Board] has apparently relied on these  
28 unchanging factors at least four prior times in finding petitioner

1 unsuitable for parole. Petitioner has continued to demonstrate exemplary  
2 behavior and evidence of rehabilitation. Under these circumstances, the  
3 continued reliance on these factors at the 2001 hearing violated due process."  
4 Internal citations omitted.); Rosenkrantz v. Marshall (C.D. Cal. 2006)  
5 444 F.Supp.2d 1063, 1081-1082 ("In the circumstances of this case, the  
6 [Board's] continued reliance on the nature of petitioner's crime to deny  
7 parole in 2004 violated due process[.] [C]ontinued reliance on the  
8 unchanging facts of petitioner's crime makes a sham of California's parole  
9 system and amounts to an arbitrary denial of petitioner's liberty interest.");  
10 Evans v. Carey E.D. Cal. 2006) WL 1867543 at 6 ("Although the Ninth Circuit  
11 in Biggs did not explicitly state when reliance on an unchanging factor  
12 would violate due process, it makes sense that reliance on such a factor  
13 becomes unconstitutional when the factor no longer has a predictive value.")

14 In Elkins, the prisoner was serving a sentence of twenty-five to life  
15 after being convicted of first degree murder and robbery, with use of a  
16 deadly weapon (Elkins, supra, 144 Cal.App.4th at 479). He had served  
17 twenty-six years (eleven years past his minimum parole date) and had been  
18 denied parole at ten prior hearings (Id. at 499-500). At his eleventh  
19 hearing the Board granted Elkins parole, which the Governor subsequently  
20 reversed (Id.) Elkins had received positive psychiatric  
21 evaluations, participated in self-help and vocational training, had  
22 realistic parole plans, and had only received two disciplinaries during  
23 his twenty-six years of incarceration (Id. at 483). Both the Board  
24 denials and the Governor's reversal relied primarily on the gravity of  
25 the commitment offense (Id.). The Elkins court vacated the Governor's  
26 decision holding that the Governor's decision to reverse the grant of  
27 parole based on the commitment offense lacked "some evidence" that  
28 Elkins posed an unreasonable risk of danger (Id. at 502). The court held



1 that the Governor's reliance on the remote immutable facts of the commitment  
2 offense violated Elkin's due process rights (Id. at 500).

3 In Rosenkrantz v. Marshall, the prisoner had been denied parole on six  
4 previous occasions on a sentence of seventeen years to life for a  
5 conviction of second degree murder with the use of a firearm Rosenkrantz  
6 v. Marshall, supra, 444 F. Supp.2d at 1082. The Board's rationale for  
7 finding him unsuitable was based solely on the nature of the commitment  
8 offense (Id. at 1084). However, the court found that "[a]fter nearly  
9 twenty years of rehabilitation, the ability to predict a prisoner's future  
10 dangerousness based simply on the circumstances of his or her crime is  
11 nil." (Id.). The court held that, after such a long period, the pre-  
12 commitment factors had lost all predictive value, and the Board's  
13 continued reliance on them to deny parole violated due process "because  
14 the facts surrounding the offense do not now constitute 'some evidence'  
15 with some 'indicia of reliability' of petitioner's dangerousness." (Id.  
16 at 1086). The court ordered Rosenkrantz released on parole (Id. at 1087-1088).

17 In Irons, the petitioner was serving a sentence of seventeen years to  
18 life for second degree murder Irons v. Warden of Cal. State Prison-Solano,  
19 supra, 358 F.Supp.2d 936, 939. In denying parole, the Board relied on  
20 the circumstances of the commitment offense, specifically, that he  
21 demonstrated a callous disregard for human life and the motive for the  
22 crime was trivial (Id. at 944). The Board found that he had realistic  
23 parole plans, no juvenile record, and minimal prior criminal history (Id.).  
24 The court additionally found that the circumstances of the crime could  
25 never change and therefore the Board could perpetually deny parole or,  
26 at best, until some future panel arbitrarily found that the crimes  
27 were not so callous or trivial (Id. at 947). As the court opined, a  
28 prisoner's "liberty interest should not be determined by such an arbitrary



1 remote possibility." (id.). The court held that the Board's continued  
2 reliance on the facts of the commitment offense violated due process (Id.).

3 The facts of the petitioner's case, although different from Biggs,  
4 Elkins, Rosenkrantz and Irons, are in no way less compelling. Petitioner  
5 has an exemplary record and has shown substantial change for the better.  
6 Even though petitioner has a college degree and was a successful businessman  
7 prior to his incarceration, he has nevertheless obtained extensive  
8 training in computer programming (Exhibit #11, pp.12-14). Petitioner  
9 has completed numerous self-help groups and continues to train other  
10 inmates as facilitators in conflict resolution through "Hands of Peace"  
11 (Exhibit #11, pp. 2-10). Petitioner has support letters from family and  
12 friends and has been forensically evaluated by multiple psychiatrists and  
13 psychologists as having a minimal potential for violence if released to  
14 the community (Exhibit #7, p.6) (Exhibit #8, p.6) (Exhibit #9, p.2). More  
15 significantly, petitioner has appeared before the Board on multiple  
16 occasions (the most recent being 11 years past his minimum eligible  
17 parole release date) and the Board continues to rely on the same, unchanging  
18 static factors to deny parole. If a prisoner's post conviction behavior  
19 doesn't carry any weight and his current dangerousness is continually  
20 evaluated on the unchanging circumstances of his offense, then there is  
21 no difference between life with the possibility of parole and life  
22 without the possibility of parole. A prisoner's offense of more than two  
23 decades ago will never change, and using this static factor as the  
24 measuring stick to gauge petitioner's current dangerousness means he will  
25 always be labeled an unreasonable risk of danger to society. Like a hamster  
26 running on a wheel and never getting anywhere, petitioner will be forever  
27 completing one requirement or positive program after another but never get  
28 any closer to release. This makes a mockery of the parole system and, as

1 such, violates due process.

2 It might be argues that since petitioner has been scheduled for another  
3 consideration hearing in 2009, he could not possibly be serving a sentence  
4 of life without the possibility of parole, in which case petitioner would  
5 disagree. The Board routinely disregards the law to follow its own "no  
6 parole" policy. Current statistics support this contention (Exhibit #14,  
7 pp.1-6), as well as do a growing number of state and federal cases against  
8 the Board and Governor (see, for example, In re Ramirez (2001) 94 Cal.App.  
9 4th 549; In re Smith (2003) 109 Cal.App.4th 871; In re Smith (2003) 114  
10 Cal.App.4th 343; In re Scott (2004) 119 Cal.App.4th 871; In re Scott (2005)  
11 133 Cal.App.4th 573; In re Elkins (2006) 144 Cal.App.4th 475; In re Lee  
12 (2006) 143 Cal.App.4th 1400; McQuillion v. Duncan (9th Cir., 2002) 306  
13 F.3d 895; Irons v. Warden of Cal. State Prison-Solano (2005) 358 F.Supp.  
14 936; Rosenkrantz v. Marshall (2006) 444 F.Supp.2d 1063; Evans v. Carey  
15 (E.D. Cal. 2006) WL 1867543). <sup>1</sup>

16 Regardless of the sentence imposed by the courts, in California today  
17 life with the possibility of parole is virtually synonymous with life  
18 without the possibility of parole. Hence, as the above facts and  
19 arguments clearly show, the Board's continual denial of petitioner's  
20 parole based on unchanging, static factors and contrary to substantial  
21 change for the better, is arbitrary and capricious and violates due process  
22 as guaranteed by both state and federal Constitutions.

23  
24 <sup>1</sup> Petitioner requests the Court take Judicial Notice of In re Criscione  
25 (Exhibit #18) relative to the statistics developed and analyzed by the  
26 Court in the case, and the Court's analysis of the Board's on-going  
27 "no parole" policies.  
28

PRAYER FOR RELIEF

Petitioner is without relief save by writ of Habeas Corpus.

WHEREFORE, having made a prima facie case for relief, petitioner prays that the court:

- 1) Issue the Writ of Habeas Corpus;
- 2) Issue an Order of Show Cause on respondents as to why relief should not be granted;
- 3) Make a determination as to whether respondents have violated petitioner's federal constitutional rights to due process;
- 4) Upon any finding that respondents have unlawfully denied petitioner's liberty interest or violated petitioner's due process rights, order respondents to vacate the decision of petitioner's 2006 parole hearing, hold a new hearing within 30 days, and grant a parole date;
- 5) Grant any relief necessary to ensure the protection of petitioner's federal constitutional rights.

VERIFICATION

I, Leslie Arthur Byrd, do hereby declare the following:

I am the petitioner in this action. I have read the foregoing Petition For Writ of Habeas Corpus and the facts stated therein are true of my own knowledge, except as to matters that are therein stated on my own information and belief, and as to these matters I believe them to be true.

I declare under penalty of perjury of the laws of California that the foregoing is true and correct, and that this declaration was executed on 12/12/07, at San Diego, California.

  
Petitioner, Petitioner

I, Sarah Horton, am a resident of San Diego County, in the State of California. I am over the age of eighteen (18) years, and I am not a party to the enclosed action. My address is:

SARAH HORTON  
4757 MANSFIELD ST. APT. B  
SAN DIEGO, CA 92116

On 12/14/07, I served the foregoing Petition For Writ of Habeas Corpus, along with the Exhibits thereto, on the parties named herein below, by placing true copies thereof, enclosed in a sealed envelope with the postage thereon fully paid, in the United States Mail in San Diego, California, addressed as follows:

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
450 Golden Gate Avenue  
San Francisco, CA 94102-3483

I declare under penalty of perjury of the laws of California that the foregoing is true and correct, and this declaration was executed on 12/14/07, at San Diego, California.

Sarah Horton  
Sarah Horton

1 Leslie Arthur Byrd  
2 D-30420, F1-05-138L  
3 P.O. Box 799001  
4 San Diego, CA 92179-9001

FILED

5 UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEC 17 2007

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

10 In re:

11 LESLIE ARTHUR BYRD  
12 Petitioner, Pro Se

Case No. \_\_\_\_\_

13  
14 On Habeas Corpus

**SBA (PR)**

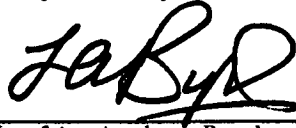
LODGE MENT OF DOCUMENTS IN SUPPORT OF  
PETITION FOR WRIT OF HABEAS CORPUS  
(EXHIBITS)

17 TO: THE HONORABLE JUDGES OF THE COURT:

18 Petitioner, Leslie Arthur Byrd, represented pro se, hereby lodges with  
19 this court **EXHIBITS**, consisting of Exhibits 1 through 18. These documents  
20 are necessary to support the Grounds and Claims which petitioner has  
21 raised in his Petition For Writ of Habeas Corpus, pursuant to the United  
22 States Rules of Evidence Code.

23 Respectfully Submitted,

24  
25 Dated: 12/12/07

  
26 Leslie Arthur Byrd  
27 Petitioner, Pro Se  
28


DECLARATION OF RECORDS

I Leslie Arthur Byrd, do hereby declare the following:

The attached document, titled "EXHIBITS" and consisting of Exhibits 1 through 18 are true and correct copies of the original documents. Where the documents were given to petitioner by another person, petitioner believes them to be true, accurate and correct copies.

I declare under penalty of perjury of both state and federal laws that the foregoing is true and correct, and that this declaration was executed on

12/12/07 at SAN Diego, CA.

  
\_\_\_\_\_  
Leslie Arthur Byrd  
Petitioner, Pro Se

## TABLE OF EXHIBITS

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1 Leslie Arthur Byrd  
2 D-30420, F1-05-138L  
3 P.O. Box 799001  
4 San Diego, CA 92179-9001

5 UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
7  
8  
9

10 In re:

11 LESLIE ARTHUR BYRD )  
12 Petitioner, Pro Se )  
13 )  
14 )  
15 On Habeas Corpus )  
16 )  
17 )  
18 )

Case No. \_\_\_\_\_

DOCUMENTS IN SUPPORT OF PETITION  
FOR WRIT OF HABEAS CORPUS

19 EXHIBITS  
20  
21  
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26  
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1 - 9

**EXHIBIT #1**

**2006 LIFE PRISONER EVALUATION REPORT**

**LIFE PRISONER EVALUATION REPORT**  
**SUBSEQUENT PAROLE CONSIDERATION HEARING # 4**  
**JULY 2006 CALENDAR**

BYRD, LESLIE

D-30420

**I. COMMITMENT FACTORS:**

- A. **LIFE CRIME:** CT. 1, PC 187 Murder 2<sup>nd</sup> Degree, Marin County Case Number 9635. Sentence: 15 years to Life. Victim: Cindy Engstrom. Age: 19. Date received by CDC 5/23/86. MEPD 1/5/95.

**Summary of Crime:** On 6/18/85, at approximately 8:45 a.m., Marin County Sheriff's Department was contacted regarding the discovery of a nude female body. The detectives noted that the body had been placed at the location of discovery. The body showed signs of violence. Further investigation disclosed the identity of the victim to be Cindy Engstrom and the cause of death to be asphyxia. On the afternoon of 6/18/85, in the Nicasio Lake area, some articles of clothing belonging to the victim were located. Information collected during the investigation, identified Byrd as the primary suspect in the murder case. During the investigation, Byrd stated to detectives, "I am responsible for what happened. I deserve to be punished".

2. **Prisoner's Version:** Byrd states that he was experiencing a tremendous amount of stress from both his job as Vice President of West America Bank and the state of his declining health due to multiple sclerosis. He feared that if he should lose his job, he would be unable to secure new employment. He found himself unable to cope with these stressors and would drive around at night for hours in a disoriented state of mind. He began seeking out the company of prostitutes to escape from his problems. He had encounters with approximately 10-12 prostitutes before he met Cindy Engstrom, the victim of his Life crime. He invited her to his home while his wife and children attended a Girl Scout function out of town. He states the victim hesitated at first, until he reassured her that he was a respectable member of the community and gave her additional information about himself. While at his home he and the victim participated in acts of bondage, with the victim being bound at the hands and feet. They both were in the bathtub and during their activities he believes the victim became frightened when water went in her mouth and nose. He states she began to scream and he became concerned that his neighbors would hear her through his open windows. He states he then panicked and pushed her under the water to get her to stop. He then got up and closed the windows, returning to a lifeless body in the bath tub. He states he knows he is responsible for her death but at the same time he convinced himself that the victim must have overdosed on drugs. He realized he needed to get out of the situation. He then drove the victim's body to a remote location and left her on the side of the road. He later realized he still had her

Copy sent to Inmate

5/9/06

clothes in the car and then threw her clothes about a mile or so from where he left the body.

**3. Aggravating/Mitigating Circumstances:**

a) **Aggravating Factors:** The victim was particularly vulnerable due to being in a state of bondage.

b) **Mitigating Factors:** The prisoner had no previous history of criminal behavior.

**II. PRECONVICTION FACTORS:**

A. **JUVENILE RECORD:** Inmate Byrd has no known prior convictions as a juvenile.

B. **ADULT CONVICTIONS AND ARRESTS:** Inmate Byrd has no known prior convictions as an adult.

C. **PERSONAL FACTORS :** Byrd is a 60 year old, white, first term. Subject was born in the union of David and Eloise Byrd. Byrd states that he has a normal upbringing. Marital status: Subject has been married since 12-23-67, He has two daughters, ages 33 and 31. Education: Subject attended the University of Arizona and completed a two year course in Graduate Banking Degree through Pacific Coast Banking School in Seattle. Employment: Senior Vice-President at West America Bank in San Rafael. Military Experience: Subject states he never served in the Armed Forces. Medical History: Subject is full duty (no camp). He has asthma and suffers from Multiple Sclerosis. Substances Abuse: Subject states that he is a social drinker, and denies any narcotic use. Gang activity: Subject states that he has never been involved with any type of street gang or club.

**III. POSTCONVICTIONS FACTORS:** Documents from the previous hearing have been considered and that information remains valid. On 5/31/05 Inmate Byrd appeared before the Board of Prison Terms (BPT) for his Subsequent Parole Consideration Hearing #3. The BPT recommended that he remain Disciplinary Free, participate in Self-Help/Therapy Programs, earn positive chronos, and obtain an updated psychiatric evaluation report (requested by the inmate) and to develop a well defined job plan. He was denied parole for 1 year. During the period of time since his hearing, prisoner's behavior has remained the same in that he continues disciplinary free behavior and actively participates in work assignment as Program Office Clerk. He has participated in BPT's recommended Self-Help/Therapy Program. See attached pre-conviction progress report for details.

IV. **FUTURE PAROLE PLANS.** Once paroled, Byrd would like to live with his wife Nancy Byrd, A school teacher who resides at 1865 West Chapalla Drive, Tucson, Arizona. Telephone number (520) 575-1106. However he recognizes that he may be required to parole back to his County of Commitment. He states that if that is the case he would be able to support himself whether employed or not. He states that he has reached the age wherein his pension is fully vested. His condition of Multiple Sclerosis entitles him to full disability benefits. His plans however, is to become involved in the Computer Software Industry. He has been offered employment opportunities from his brother in law, Mr. Barry Sullivan, the owner of a computer software company. Financial support has also been offered by his friend Joseph Caudle. Byrd's personal funds consist of a trust balance of approximately \$500.00.

V. **SUMMARY:**

- A. Prior to release, the prisoner could benefit from: Maintaining a disciplinary free record and continuing his participation in self-help and therapy programs.
- B. This Board Report is based on a 1 hour interview with the inmate and a thorough review of his Central File.

Prepared by,

Reviewed by,

C. York  
C. YORK, CC-I

D. Tapia <sup>CC-II</sup>  
D. TAPIA, CC-II

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

**LIFE PRISONER: POSTCONVICTION PROGRESS REPORT**

- ☐ DOCUMENTATION HEARING
- ☒ PAROLE CONSIDERATION HEARING# 4
- ☐ PROGRESS HEARING

**INSTRUCTIONS:**

TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT.

TO BPT STAFF: EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, i.e., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§ 2290-2292, 2410 AND 2439.

POST CONVICTION REPORT			REASON
YEAR	BPT	PBR	
1/22/02 to 1/21/03			<p><b>PLACEMENT:</b> Remained housed at RJD-III under Med-A/R custody in the general population assigned to Facility IV Program Office as a Clerk. On 1/22/02 he appeared before the BPT for his Subsequent Parole Consideration Hearing #2. BPT denied parole 3-years and recommended: 1. Remain Disciplinary free 2. Participate in self-help and therapy groups. On 2/5/02 Inmate received a post-board review, Inmate stated that he understood the BPT's recommendation and would comply with them at a later date. Inmate was continued in his current assignment per his request. On 5/21/02 he received an Annual Review.</p> <p><b>CUSTODY:</b> MED-A/R.</p> <p><b>VOCATIONAL TRAINING:</b> None noted this time period.</p> <p><b>ACADEMICS:</b> None noted this time period.</p> <p><b>WORK RECORD:</b> Facility #4 Program Office Clerk. CDC 101's dated March, June and Sept. 2002 reflects Exceptional Performance in all areas.</p> <p><b>GROUPS ACTIVITIES:</b> CDC 128-B dated 4/8/02, 7/9/02, and 10/22/02 reflects that Byrd served as an inside facilitator for The Hands of Peace/Friends Outside Creative Conflicts Resolution Workshops.</p> <p><b>PSYCHIATRIC TREATMENT:</b> None noted this time period.</p> <p><b>PRISON BEHAVIOR:</b> Disciplinary free this time period.</p> <p><b>OTHER:</b> None noted this time period.</p>
CORRECTIONAL COUNSELOR SIGNATURE <i>C. York, CCI</i>			DATE 4/20/06
NAME BYRD, LESLIE	CDC NUMBER D-30420	INSTITUTION RJDCF	CALENDAR 7/2006
			HEARING DATE July 19, 2006

BOARD OF PRISON TERMS

## CONTINUATION SHEET: POSTCONVICTION PROGRESS REPORT

POST CONVICTION REPORT			REASON
YEAR	BPT	PBR	
1/22/03 TO 1/21/04			<p><b>PLACEMENT:</b> Remained housed at RJD-III under MED A/R custody in the general population continuing his assignment in Facility #4 as a Program Office Clerk. On 4/23/04 he appeared before UCC for his Annual Review. His Mandatory Minimum Score was established at 28 points level-III per CCR 3375.2 (Life Inmate). He was continued in his present program.</p> <p><b>CUSTODY:</b> MED-A/R.</p> <p><b>VOCATIONAL TRAINING:</b> None noted this time period.</p> <p><b>ACADEMICS:</b> None noted this time period.</p> <p><b>WORK RECORD:</b> Facility #4 Program Office Clerk. CDC 101's dated: Jan. March, June, And Sept. 2003 reflects Exceptional Performances ion all areas.</p> <p><b>GROUP ACTIVITIES:</b> CDC 128-B's dated 2/9/03, 6/15/03 and 11/17/03, Inmate served as an inside facilitator for The Hands of Peace/Friends Outside Creative Conflict Resolution Workshops.</p> <p><b>PSYCHIATRIC TREATMENT:</b> None noted this time period.</p> <p><b>PRISON BEHAVIOR:</b> Disciplinary free this time period.</p> <p><b>OTHER:</b> None noted this time period.</p>

## ORDER:

☐ BPT date advanced by \_\_\_\_\_ months.

☐ BPT date affirmed without change.

☐ PBR date advanced by \_\_\_\_\_ months.

☐ PBR date affirmed without change.

## SPECIAL CONDITIONS OF PAROLE:

☐ Previously imposed conditions affirmed.

☐ Add or modify \_\_\_\_\_

☐ Schedule for Progress Hearing on appropriate institutional calendar.

NAME	CDC NUMBER	INSTITUTION	CALENDAR	HEARING DATE
BYRD, LESLIE	D-30420	RJDCF	7/2006	July 19, 2006

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

## CONTINUATION SHEET: POSTCONVICTION PROGRESS REPORT

POST CONVICTION REPORT			REASON
YEAR	BPT	PBR	
1/22/04 TO 1/21/05			<p><b>PLACEMENT:</b> Remained housed at RJD-III under MED A/R custody in the general population continuing his assignment in Facility #4. On 2/18/04 he was re-assigned to Facility #1 Program Office as a Clerk.</p> <p><b>CUSTODY:</b> MED-A/R.</p> <p><b>VOCATIONAL TRAINING:</b> None noted this time period.</p> <p><b>ACADEMICS:</b> None noted this time period.</p> <p><b>WORK RECORD:</b> Facility #1 Program Office Clerk. CDC 101's dated: Jan. Feb. April, July 2004 reflects Exceptional Performances in all areas.</p> <p><b>GROUP ACTIVITIES:</b> CDC 128-B's dated 6/1/04, completed the advance 22 hour, The Hands of Peace/Friends Outside Creative Conflict Resolution Workshop.</p> <p><b>PSYCHIATRIC TREATMENT:</b> None noted this time period.</p> <p><b>PRISON BEHAVIOR:</b> CDC 114-D dated 11/24/04, Inmate was sent to Ad/Seg for safety reason due to being a victim of a battery.</p> <p><b>OTHER:</b> CDC 128-B dated 2/5/04 Laudatory chrono authored by J.W. Dresbach, Facility IV Captain.</p>

## ORDER:

☐ BPT date advanced by \_\_\_\_\_ months.☐ BPT date affirmed without change.☐ PBR date advanced by \_\_\_\_\_ months.☐ PBR date affirmed without change.

## SPECIAL CONDITIONS OF PAROLE:

☐ Previously imposed conditions affirmed.☐ Add or modify \_\_\_\_\_☐ Schedule for Progress Hearing on appropriate institutional calendar.NAME  
BYRD, LESLIECDC NUMBER  
D-30420INSTITUTION  
RJDCFCALENDAR  
7/2006HEARING DATE  
July 19, 2006



BOARD OF PRISON TERMS

STATE OF CALIFORNIA

## CONTINUATION SHEET: POSTCONVICTION PROGRESS REPORT

POST CONVICTION REPORT			REASON
YEAR	BPT	PBR	
1/22/05 TO 1/21/06			<p><b>PLACEMENT:</b> Remained housed at RJD-III under MED A/R custody in the general population.</p> <p><b>CUSTODY:</b> MED-A/R.</p> <p><b>VOCATIONAL TRAINING:</b> None noted this time period.</p> <p><b>ACADEMICS:</b> None noted this time period.</p> <p><b>WORK RECORD:</b> Facility #1 Program Office Clerk. CDC 101's dated: Jan., April, July, October 2005, and Jan., 2006 reflects Exceptional Performances in all areas.</p> <p><b>GROUP ACTIVITIES:</b> CDC 128-B's dated 1/31/05, 1/20/06, completed 88 hours of required training for The Hands of Peace/Friends Outside Creative Conflict Resolution Workshop as a facilitator.</p> <p><b>PSYCHIATRIC TREATMENT:</b> None noted this time period.</p> <p><b>PRISON BEHAVIOR:</b> Inmate Byrd has remained disciplinary free since his last board hearing..</p> <p><b>OTHER:</b> CDC 128-B dated 9/6/05 Laudatory chrono authored by J.W. Dresbach, Facility I Captain.</p>

## ORDER:

☐ BPT date advanced by \_\_\_\_\_ months.☐ BPT date affirmed without change.☐ PBR date advanced by \_\_\_\_\_ months.☐ PBR date affirmed without change.

## SPECIAL CONDITIONS OF PAROLE:

☐ Previously imposed conditions affirmed.☐ Add or modify \_\_\_\_\_☐ Schedule for Progress Hearing on appropriate institutional calendar.

NAME	CDC NUMBER	INSTITUTION	CALENDAR	HEARING DATE
BYRD, LESLIE	D-30420	RJDCF	7/2006	July 19, 2006

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

## CONTINUATION SHEET: POSTCONVICTION PROGRESS REPORT

POST CONVICTION REPORT			REASON
YEAR	BPT	PBR	
1/22/06 TO PRESENT (4/20/06)			<p><b>PLACEMENT:</b> Remained housed at RJD-III under MED A/R custody in the general population.</p> <p><b>CUSTODY:</b> MED-A/R.</p> <p><b>VOCATIONAL TRAINING:</b> None noted this review period.</p> <p><b>ACADEMICS:</b> None noted this review period.</p> <p><b>WORK RECORD:</b> None noted this review period.</p> <p><b>GROUP ACTIVITIES:</b> Participated in the Hands of Peace/Friends Outside Creative Conflict Resolution Workshop as a facilitator.</p> <p><b>PSYCHIATRIC TREATMENT:</b> None noted this review period.</p> <p><b>PRISON BEHAVIOR:</b> Inmate Byrd has remained disciplinary free this review period.</p> <p><b>OTHER:</b> Received two Laudatory chronos dated 1/27/06, authored by J.W. Dresbach, Facility I Captain, and 1/23/06, authored by Protestant Chaplain, Activity Group Sponsor.</p> <p>Prepared By: _____ Reviewed By: _____</p> <p><u>C. York</u> <u>D. Tapia</u> C. YORK, CC-I D. TAPIA, CC-II</p>

## ORDER:

☐ BPT date advanced by \_\_\_\_\_ months.☐ BPT date affirmed without change.☐ PBR date advanced by \_\_\_\_\_ months.☐ PBR date affirmed without change.

## SPECIAL CONDITIONS OF PAROLE:

☐ Previously imposed conditions affirmed.☐ Add or modify \_\_\_\_\_☐ Schedule for Progress Hearing on appropriate institutional calendar.

NAME	CDC NUMBER	INSTITUTION	CALENDAR	HEARING DATE
BYRD, LESLIE	D-30420	RJDCF	7/2006	July 19, 2006

**EXHIBIT #2**

**2006 SUBSEQUENT PAROLE CONSIDERATION HEARING**

SUBSEQUENT PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

In the matter of the Life )  
Term Parole Consideration )  
Hearing of: )

CDC Number D-30420

LESLIE BYRDE )  
----- )

**INMATE  
COPY**

R.J. DONOVAN CORRECTIONAL FACILITY

SAN DIEGO, CALIFORNIA

JULY 19, 2006

PANEL PRESENT:

Mr. James Davis, Presiding Commissioner  
Mr. Alejandro Armenta, Deputy Commissioner

OTHERS PRESENT:

Mr. Leslie Byrde, Inmate  
Mr. Daniel Coryn, Attorney for Inmate  
Ms. Katherine Mitchell, Deputy District Attorney  
Mrs. Linda Engstrom, Victim's Next of Kin  
Mr. Scott Engstrom, Victim's Next of Kin  
Mr. William Engstrom, Victim's Next of Kin  
Ms. Maryann Diaz, Correctional Counselor  
Correctional Officers Unidentified

CORRECTIONS TO THE DECISION HAVE BEEN MADE

-----  
-----

No  
Yes

See Review of Hearing  
Transcript Memorandum

Stacy Wegner, Peters Shorthand Reporting

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P R O C E E D I N G S

1  
2       **PRESIDING COMMISSIONER DAVIS:** This is a  
3 subsequent parole consideration hearing for  
4 Leslie Byrde, CDC number D-30420. Today's date  
5 is July 19th, 2006. We're located at R.J.  
6 Donovan Correctional Facility. The inmate was  
7 received on May 23rd, 1986, from Marin County.  
8 The life term began on May 23rd, 1986, with a  
9 minimum eligible parole date of January 5th,  
10 1995. The controlling offense for which the  
11 inmate was committed is murder second, case  
12 number MAR-9635, count one, Penal Code Section  
13 187 second. The inmate received a term of 15  
14 years to life. This hearing is being tape  
15 recorded, and for the purposes of voice  
16 identification, we'll each state our first and  
17 last name, spelling the last name. And when it  
18 reaches you, Mr. Byrde, if you'll also give us  
19 your CDC number, please?

20       **INMATE BYRDE:** Yes.

21       **PRESIDING COMMISSIONER DAVIS:** I'll start  
22 and move to my left. I'm James Davis, D-A-V-I-  
23 S, Commissioner.

24       **DEPUTY COMMISSIONER ARMENTA:** My name is  
25 Alejandro Armenta, A-R-M-E-N-T-A, Deputy  
26 Commissioner.

27       **INMATE BYRDE:** Leslie Byrde, B-Y-R-D-E, D-

1 30420.

2 **ATTORNEY CORYN:** Daniel Coryn, C-O-R-Y-N,  
3 attorney for Mr. Byrde.

4 **DEPUTY DISTRICT ATTORNEY MITCHELL:**  
5 Katherine Mitchell, M-I-T-C-H-E-L-L.

6 **MRS. ENGSTROM:** Linda Engstrom, E-N-G-S-T-  
7 R-O-M, mother of Cindy.

8 **PRESIDING COMMISSIONER DAVIS:** Thank you.

9 **MR. SCOTT ENGSTROM:** Scott Engstrom, E-N-G-  
10 S-T-R-O-M, brother of the victim.

11 **MS. DIAZ:** Maryann Diaz, D-I-A-Z,  
12 Correctional Counselor II.

13 **MR. WILLIAM ENGSTROM:** William Engstrom, E-  
14 N-G-S-T-R-O-M, father of the deceased.

15 **PRESIDING COMMISSIONER DAVIS:** Thank you.  
16 Let the record also reflect that we're joined by  
17 a correctional officer who is here for security  
18 purposes only and will not be actively  
19 participating in the hearing. Mr. Byrde, in  
20 front of you in the laminated piece of paper is  
21 the American's with Disabilities Act statement.  
22 Would you please read that aloud, sir?

23 **INMATE BYRDE:** In front of me. I can't see  
24 out this eye, so --

25 The American's with Disabilities Act is  
26 a law to help people with disabilities.  
27 Disabilities are problems that make it

1 harder for some people to see, hear,  
2 breathe, talk, walk, learn, think,  
3 work, or take care of themselves than  
4 it is for others. No one can be kept  
5 out of public places or activities  
6 because of a disability. If you have a  
7 disability, you have the right to ask  
8 for help to get ready for your BPT  
9 hearing, get to the hearing, talk, read  
10 forms and papers and understand the  
11 hearing process. BPT will look at what  
12 you ask for to make sure that you have  
13 a disability that is covered by the ADA  
14 and that you have asked for the right  
15 kind of help. If you do not get help,  
16 or if you don't think you got the kind  
17 of help you need, ask for BPT 1074  
18 Grievance Form. You can also get help  
19 to fill it out.

20 **PRESIDING COMMISSIONER DAVIS:** Thank you.  
21 Our records indicate that in cooperation with  
22 the staff in the institution on March 28th,  
23 2006, you reviewed and signed a BPT Form 1073  
24 indicating that you have multiple sclerosis. Is  
25 that the reason for the wheelchair?

26 **INMATE BYRDE:** Yes, sir.

27 **PRESIDING COMMISSIONER DAVIS:** And the



1 wheelchair is something that you have all the  
2 time?

3 INMATE BYRDE: Yes, sir.

4 PRESIDING COMMISSIONER DAVIS: And that you  
5 had it available to you to make your way to the  
6 hearing today?

7 INMATE BYRDE: Yes, sir.

8 PRESIDING COMMISSIONER DAVIS: All right.  
9 And I see that you wear glasses. And they are  
10 sufficient for you to read?

11 INMATE BYRDE: Yes.

12 PRESIDING COMMISSIONER DAVIS: And you've  
13 had those -- you've had the ability to -- or  
14 you've had those available to you in reviewing  
15 your Central File and all the other documents in  
16 preparation for this hearing?

17 INMATE BYRDE: Yes.

18 PRESIDING COMMISSIONER DAVIS: All right.  
19 You're able to hear me all right?

20 INMATE BYRDE: Yes.

21 PRESIDING COMMISSIONER DAVIS: And of  
22 course, you made your way by way of the  
23 wheelchair. Is there any reason that you can  
24 think of that you would not be able to actively  
25 participate in this hearing?

26 INMATE BYRDE: No, sir.

27 PRESIDING COMMISSIONER DAVIS: All right.

1 Now, you indicated that you were -- had  
2 difficulty seeing out of your right eye?

3 INMATE BYRDE: Yes, sir.

4 PRESIDING COMMISSIONER DAVIS: And is that  
5 something that's been longstanding?

6 INMATE BYRDE: Yes, sir. It's part of the  
7 multiple sclerosis. It gradually makes you go  
8 blind.

9 PRESIDING COMMISSIONER DAVIS: Okay.

10 INMATE BYRDE: My left is still, knock on  
11 wood, halfway decent shape. My right eye is  
12 maybe 50 percent. I can't read with the right  
13 eye.

14 PRESIDING COMMISSIONER DAVIS: All right.  
15 And everything else -- we're all squared away  
16 otherwise, correct?

17 INMATE BYRDE: Yes, sir.

18 PRESIDING COMMISSIONER DAVIS: And Counsel,  
19 you're satisfied with that as well?

20 ATTORNEY CORYN: Yes.

21 PRESIDING COMMISSIONER DAVIS: Thank you.  
22 This hearing is being conducted pursuant to  
23 Penal Code Sections 3041 and 3042 and the rules  
24 and regulations of the Board of Prison Terms  
25 governing parole consideration hearings for life  
26 inmates. The purpose of today's hearing is to  
27 once again consider the number and nature of the

1 crimes for which you were committed, your prior  
2 criminal and social history, and your behavior  
3 and programming since your commitment. Now,  
4 we've had the opportunity to review your Central  
5 File and your prior transcripts, and you'll be  
6 given an opportunity to correct or clarify the  
7 record as we proceed. We will reach a decision  
8 today and inform of whether or not we find you  
9 suitable for parole and the reasons for that  
10 decision. If you are found suitable for parole,  
11 the length of your confinement will be explained  
12 to you. Nothing that happens in today's hearing  
13 will change the findings of the Court. The  
14 Panel is not here for the purpose of retrying  
15 your case. We're here for the sole purpose of  
16 determining your suitability for parole. Do you  
17 understand that, sir?

18 **INMATE BYRDE:** Yes, sir.

19 **PRESIDING COMMISSIONER DAVIS:** All right.  
20 Your hearing will be conducted in two phases.  
21 First, I will discuss with you the crime for  
22 which you were committed, as well as your prior  
23 criminal and social history. Commissioner  
24 Armenta will then discuss with you your progress  
25 since your commitment, your counselor's report,  
26 your psychological evaluation, parole plans, and  
27 any letters of support or opposition as they may

1 exist. Once that's concluded, the  
2 Commissioners, the District Attorney then your  
3 attorney will have an opportunity to ask you  
4 questions. Questions that come from the  
5 District Attorney will be asked through the  
6 Chair then you will respond back to the Panel  
7 with your answer. Next, the District Attorney  
8 and then your attorney will have an opportunity  
9 to make a final closing statement, followed by  
10 your statement, which should be focused on why  
11 you believe that you are suitable for parole,  
12 followed by statements from the victim's next of  
13 kin. California Code of Regulations states that  
14 regardless of time served a life inmate shall be  
15 found unsuitable for and denied parole, if in  
16 the judgment of the Panel the inmate would pose  
17 an unreasonable risk of danger to society if  
18 released from prison. Now, you have certain  
19 rights. Those rights include the right to a  
20 timely notice of this hearing, the right to  
21 review your Central File, and the right to  
22 present relevant documents. Now, Counsel, are  
23 you satisfied that your client's rights have  
24 been met to date?

25 **ATTORNEY CORYN:** Yes, I am.

26 **PRESIDING COMMISSIONER DAVIS:** Thank you.

27 You have an additional right, and that is to be

1 heard by an impartial Panel. Now, you've heard  
2 Commissioner Armenta and I introduce ourselves  
3 today. Do you have any reason to believe that  
4 we would not be impartial?

5 **INMATE BYRDE:** No, I don't.

6 **PRESIDING COMMISSIONER DAVIS:** Thank you.  
7 You will receive a written copy of your decision  
8 today. That decision becomes effective within  
9 120 days. A copy of the decision and a copy of  
10 the transcript will be sent to you, and you will  
11 have 90 days from that date to appeal if you so  
12 desire. You are not required to admit to your  
13 offense or discuss your offense. However, this  
14 Panel does accept the findings of the Court to  
15 be true. In fact, the Board has eliminated its  
16 appeal process. If you disagree with anything  
17 in today's hearing, you have the right to go  
18 directly to court with your complaint.

19 Commissioner Armenta, are we going to be dealing  
20 with anything from a confidential file today?

21 **DEPUTY COMMISSIONER ARMENTA:** No, we are  
22 not.

23 **PRESIDING COMMISSIONER DAVIS:** All right.  
24 Thank you. I'm going to pass a checklist of  
25 documents to both counsel. If you would please  
26 review that to make sure that we're both --  
27 we're all operating off the same list of

1 documents.

2 **DEPUTY DISTRICT ATTORNEY MITCHELL:** I have  
3 these. Thank you.

4 **PRESIDING COMMISSIONER DAVIS:** Thank you.

5 **ATTORNEY CORYN:** Yes, I have these  
6 documents. Additionally, I have some chronos --

7 **INMATE BYRDE:** Those are duplicates.

8 Basically, the things that should be -- the  
9 chronos are not duplicates, but the tops of all  
10 these are letters just in case they were lost.

11 **ATTORNEY CORYN:** Yeah.

12 **PRESIDING COMMISSIONER DAVIS:** All right.  
13 Is that all the additional documents that you  
14 have for us today?

15 **ATTORNEY CORYN:** Yes. Mr. Byrde said it  
16 might be duplicative, but we just want to make  
17 sure that --

18 **DEPUTY COMMISSIONER ARMENTA:** That's fine.

19 **PRESIDING COMMISSIONER DAVIS:** We'll take a  
20 look at that compared to what we have and review  
21 it at the appropriate time. And I'm sure Mr.  
22 Armenta will cover this as well, but if for some  
23 reason we miss something, please let us know.  
24 I'm going to go ahead and mark that checklist of  
25 documents as Exhibit One. Any preliminary  
26 objections, Counsel?

27 **ATTORNEY CORYN:** None.

1           **PRESIDING COMMISSIONER DAVIS:** All right.

2 Will your client be speaking with us today?

3           **ATTORNEY CORYN:** Yes.

4           **PRESIDING COMMISSIONER DAVIS:** All right.

5 Then would you raise your right hand then, sir?

6 Do you solemnly swear or affirm that the  
7 testimony you are about to give at this hearing  
8 will be the truth, the whole truth, and nothing  
9 but the truth?

10          **INMATE BYRDE:** I do.

11          **PRESIDING COMMISSIONER DAVIS:** Thank you.

12 All right. Absence objection I want to  
13 incorporate by reference the probation officer's  
14 report, pages two through six, and refer to the  
15 July 2006 calendar board report for the crime  
16 summary. Starting on page one, paragraph one,  
17 it's a summary of crime.

18               On 6/18/85 at approximately 8:45 a.m.  
19               Marin County Sheriff's Department was  
20               contacted regarding the discovery of a  
21               nude female body. The detective noted  
22               that the body had been placed at the  
23               location of discovery. The body showed  
24               signs of violence. Further  
25               investigation disclosed the identity of  
26               the victim to be Cindy Engstrom, E-N-G-  
27               S-T-R-O-M, and the cause of death to be

1 asphyxia. On the afternoon of 6/18/85  
2 in the Casino Lake area some articles  
3 of clothing belonging to the victim  
4 were located. Information collected  
5 during the investigation identified  
6 Byrde as the primary suspect in the  
7 murder case. During investigation  
8 Byrde stated to detectives, "I am  
9 responsible for what happened. I  
10 deserve to be punished."

11 There's your version here as well, but I  
12 think, Mr. Byrde, since you have chosen to speak  
13 with us today, I'll let you go ahead and tell us  
14 your version rather than read it into the  
15 record. Why don't you tell us what happened on  
16 that a day. First of all, did you commit this  
17 crime?

18 **INMATE BYRDE:** Yes, sir, I did.

19 **PRESIDING COMMISSIONER DAVIS:** And tell us  
20 what happened.

21 **INMATE BYRDE:** It's been a long time. They  
22 didn't make me do this last time, or that I can  
23 recollect. Ms. Engstrom and I were at my home  
24 for purposes of sexual liaison. I suggested  
25 that we try bondage situation in the bathtub.  
26 She agreed. She actually had known that, about  
27 the bondage, before she went to the house. I



1 talked to her the night before. When we were in  
2 the bathtub having sex I think she panicked.  
3 She started yelling and struggling. I panicked.

4 **PRESIDING COMMISSIONER DAVIS:** Was that  
5 because her mouth and nose were beginning to go  
6 under water?

7 **INMATE BYRDE:** No, sir, I don't think so.  
8 I think she might of gotten water in her mouth  
9 and nose from the splashing around, and that  
10 might of caused what happened, but I mean, I  
11 wasn't holding her down. But anyway, she did  
12 panic. She started yelling, and I was -- my  
13 windows were wide open. We were close to  
14 neighbors. I mean, I wasn't like -- I mean, I  
15 just freaked. I didn't -- I pushed her under  
16 the water. Apparently, I hit her because she  
17 was bruised. I have no specific memory of  
18 holding her under water or anything like that,  
19 but obviously it went by in a flash for me. It  
20 just went by in a flash. I'm obviously  
21 responsible. She was in a helpless situation.  
22 Whether she panicked or not, it was my fault.

23 **PRESIDING COMMISSIONER DAVIS:** So her hands  
24 -- now, her hands and feet were tied?

25 **INMATE BYRDE:** They were initially. She  
26 pulled them loose while she was struggling.  
27 They weren't tied that tight, but they were in -

1 - they had I guess, football tape, I guess you  
2 could call it, white football type, and she  
3 pulled them all loose. Police found the tape  
4 with the rest of the stuff and it was unbroken.

5 **PRESIDING COMMISSIONER DAVIS:** If her hands  
6 had been loose, she would of been able to lift  
7 herself out of the bathtub.

8 **INMATE BYRDE:** I mean, during the struggle  
9 she pulled herself loose, but I obviously had  
10 hit her and knocked her out or done something or  
11 pushed her under water. I mean, whatever  
12 happened to her happened because I did it. I  
13 mean, there's no question about that. It's just  
14 that I don't -- I didn't -- I didn't do it  
15 intentionally. I mean, I'm responsible. I  
16 didn't set out to injure her, but when she  
17 panicked, I think I panicked, and all I wanted  
18 her to do was shut up.

19 **PRESIDING COMMISSIONER DAVIS:** The  
20 probation officer's report on page two, second  
21 paragraph, indicates signs of violence were  
22 noted on the body, including bruises from her  
23 forehead, the backs of her hands, and swelling  
24 over her left eye, markings of her left ankle  
25 and wrist indicating some kind of tying or  
26 constriction having been placed around her  
27 ankles and wrists. Dr. Jindrich, J-I-N-D-R-I-C-

1 H, found the cause of death to be asphyxia.  
2 Also observed varying types of trauma to the  
3 body including bruising over the victim's right  
4 eye, her forehead, her left eye, inside her  
5 upper lip, a large area of bruising on top of  
6 her head and behind her left ear. On top of the  
7 victim's right hand and wrist was observed  
8 recent bruising and also depression of the skin  
9 suggesting some kind of binding having been  
10 wrapped around her wrist. The doctor also  
11 observed bruising on the victim's right and left  
12 ankles. Also observed evidence of forcible  
13 compression on the victim's neck but was unable  
14 to definitely state what actually caused the  
15 strangulation resulting in the victim's death as  
16 there was also evidence of drowning. Sounds to  
17 me like there was a lot of -- there was a lot of  
18 force being exerted here?

19 **INMATE BYRDE:** Well, her wrists were tied  
20 to her ankles. That's exactly how those bruises  
21 took place. In other words, her right wrist was  
22 taped to her right ankle. Her left wrist was  
23 taped to her left ankle, so her wrist and ankles  
24 would of been bruised as she pulled out. We  
25 also inside the bathtub, and it wasn't a round  
26 tub, it's a rectangular square tub, thrashed in  
27 there, and I'm quite she got some bruises there

1 too, but also I'm quite sure I hit her in the  
2 head or shoved her head. I mean, I don't have a  
3 specific memory of punching or anything like  
4 that, but I do have a memory of shoving her  
5 underwater and telling her to be quiet or trying  
6 to get her to be quiet.

7 **PRESIDING COMMISSIONER DAVIS:** All right.  
8 In terms of arrests, there are no -- there's no  
9 prior juvenile history and no adults arrest  
10 prior to the instant offense. In terms of a  
11 social history, you were born in Los Angeles.  
12 Your father was a career naval officer. You  
13 believed your father to be a remote person,  
14 reserved, quiet, non-emotional, and controlling.  
15 You describe your mother as an alcoholic. A  
16 very bright woman who was -- you described as a  
17 housewife and someone who taught school while  
18 you were in Hawaii. By the way, if I say that  
19 doesn't strike you as accurate or you want to  
20 make a clarification, please let me know. Are  
21 we correct so far?

22 **INMATE BYRDE:** Pretty much. I've softened  
23 my opinion of my father in the last 20 years.

24 **PRESIDING COMMISSIONER DAVIS:** Why do you  
25 think you reflected on him this way at this  
26 particular time?

27 **INMATE BYRDE:** Well, I think maybe he

1 softened and I softened, and we've come together  
2 a little bit.

3 **PRESIDING COMMISSIONER DAVIS:** Do you keep  
4 in contact now?

5 **INMATE BYRDE:** Yes, sir. He lives in  
6 Carlsbad, and he visits regularly.

7 **PRESIDING COMMISSIONER DAVIS:** Okay.

8 **INMATE BYRDE:** He's 88 years old, and so he  
9 comes down.

10 **PRESIDING COMMISSIONER DAVIS:** You indicate  
11 that your mother was an insomniac who slept  
12 until noon, also an alcoholic and drank -- went  
13 to bed a about 5:00 a.m., slept until noon, and  
14 then started drinking at 5:00 p.m. and would  
15 drink a full bottle of gin in one evening?

16 **INMATE BYRDE:** Every day.

17 **PRESIDING COMMISSIONER DAVIS:** And let your  
18 sister and you to take care of yourselves -- or  
19 you and your sisters pretty much take care of  
20 yourselves?

21 **INMATE BYRDE:** Yes, sir.

22 **PRESIDING COMMISSIONER DAVIS:** Do you still  
23 keep in contact with your sisters?

24 **INMATE BYRDE:** Yes, sir.

25 **PRESIDING COMMISSIONER DAVIS:** And where do  
26 they live?

27 **INMATE BYRDE:** One of them lives in Orange

1 County. One of them lives in Scottsdale,  
2 Arizona.

3 **PRESIDING COMMISSIONER DAVIS:** Okay. And  
4 you keep in contact by letters?

5 **INMATE BYRDE:** By letters. The one from  
6 Orange County visited a couple months ago, and  
7 we write.

8 **PRESIDING COMMISSIONER DAVIS:** Okay. You  
9 had a fairly good relationship with both of your  
10 sisters growing up, particularly your younger  
11 sister. Is that still the case?

12 **INMATE BYRDE:** Yes, sir, that's the one in  
13 Orange County.

14 **PRESIDING COMMISSIONER DAVIS:** Your mother  
15 died in 1977 by drowning in the family swimming  
16 pool. There was some assumption that perhaps  
17 she blacked out and just drown?

18 **INMATE BYRDE:** She had -- in addition the  
19 her alcoholism, she smoked at least two packs of  
20 cigarettes every day, and she used to go  
21 swimming in her pool by herself, which was not  
22 the smartest thing to do. That's probably what  
23 happened. That's what the doctor said. She  
24 probably had a little stroke and blacked out or  
25 something.

26 **PRESIDING COMMISSIONER DAVIS:** The father  
27 is now living -- you said he's now living in

1 Oceanside?

2 INMATE BYRDE: La Costa.

3 PRESIDING COMMISSIONER DAVIS: La Costa.

4 He remarried?

5 INMATE BYRDE: Yes, sir.

6 PRESIDING COMMISSIONER DAVIS: You

7 graduated from Arcadia High School in Arizona in

8 1963, went to the University of Arizona where

9 you have a BS in business administration. And

10 you took some graduate courses, including a two-

11 year course in banking?

12 INMATE BYRDE: Yes, sir.

13 PRESIDING COMMISSIONER DAVIS: You were

14 employed by the Arizona Bank in Phoenix, Arizona

15 in 1971 through '83 and left there to take a

16 better job with the West America Bank?

17 INMATE BYRDE: Correct.

18 PRESIDING COMMISSIONER DAVIS: As a senior

19 vice president?

20 INMATE BYRDE: Correct.

21 PRESIDING COMMISSIONER DAVIS: Where you

22 managed a portfolio of about seven million

23 dollars --

24 INMATE BYRDE: 700 million.

25 PRESIDING COMMISSIONER DAVIS: 700 million.

26 Okay. They left out a few zeros in this

27 process.

1           **INMATE BYRDE:** I was in charge of all the  
2 loans for the entire bank.

3           **PRESIDING COMMISSIONER DAVIS:** Okay.  
4 Including also some teaching at Pema Junior  
5 College (phonetic)?

6           **INMATE BYRDE:** Yes, sir.

7           **PRESIDING COMMISSIONER DAVIS:** And you're  
8 active in the community during this time. You  
9 were treasurer of the National Cystic Fibrosis  
10 Foundation?

11           **INMATE BYRDE:** Just the Arizona chapter.

12           **PRESIDING COMMISSIONER DAVIS:** The Arizona  
13 chapter. Why the cystic fibrosis? What was the  
14 interest in that?

15           **INMATE BYRDE:** Actually, I had a friend who  
16 had a child with cystic fibrosis and asked me if  
17 I could get involved.

18           **PRESIDING COMMISSIONER DAVIS:** The director  
19 of the American Red Cross for the Southern  
20 Arizona Chapter for '81 to '82, and you were  
21 involved in the Kiwanis Club in raising money  
22 for Boy Scouts, Big Brothers, Heart Association  
23 and so on?

24           **INMATE BYRDE:** Yes, sir.

25           **PRESIDING COMMISSIONER DAVIS:** It's  
26 interesting to juxtapose all of against what the  
27 District Attorney and some of the information at